

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

TERYSA M. WELCH,

PLAINTIFF,

vs.

NO: CIV-11-0700 KG/SCY

CITY OF ALBUQUERQUE, a New Mexico  
Municipality, et al.,

DEFENDANTS.

TRANSCRIPT OF TRIAL PROCEEDINGS - VOLUME I

BEFORE THE HONORABLE KENNETH J. GONZALES

MONDAY, MAY 14, 2018; 8:48 A.M.

ALBUQUERQUE, NEW MEXICO

Proceedings recorded by mechanical stenography;  
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5 FOR THE DEFENDANTS:

6 WIGGINS, WILLIAMS & WIGGINS  
7 1803 Rio Grande Boulevard, Northwest  
8 Albuquerque, New Mexico 87104  
BY: MS. PATRICIA WILLIAMS and  
MS. LORNA M. WIGGINS

9 Also Present: Ms. Terysa M. Welch  
10 Ms. Trish Hernandez  
11 Mr. Trevor Wiggins  
12 Ms. Elizabeth Paiz  
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1 THE COURT: All right. Good morning, everyone.  
2 Please be seated.

3 MR. VILLA: Good morning.

4 THE COURT: Okay. We have the jury I think already  
5 in the jury deliberation room.

6 Let me just call the case formally. This is Welch  
7 versus City of Albuquerque and Raymond Schultz, Civil Cause  
8 11-CV-700.

9 May I have appearances.

10 MR. VILLA: Ryan Villa and Richelle Anderson on  
11 behalf of the plaintiff Terysa Welch. Good morning, Your  
12 Honor.

13 THE COURT: Okay. Good morning.

14 MS. WILLIAMS: Good morning. Patti Williams and  
15 Lorna for the defendants Raymond Schultz and the City of  
16 Albuquerque. With us at counsel table are Retired Deputy Chief  
17 Paiz and our legal assistants, Trevor Wiggins and Trish  
18 Hernandez.

19 THE COURT: All right. And I'm sorry, you said  
20 Mr. Schultz?

21 MS. WILLIAMS: Chief Schultz is not here.

22 THE COURT: He is not here. Will he be here?

23 MS. WILLIAMS: He will be here on Friday to testify,  
24 but he is -- he is not going to sit for the entire trial  
25 because of his job duties.

1 THE COURT: Okay. Well, good morning, everyone.

2 I had a few things to cover very briefly before we  
3 call the jury in. I don't want to keep them waiting very long.

4 I received a number of -- Well, I'd received the  
5 trial briefs filed, I guess it was Friday, and there were a  
6 number of issues or at least red flags brought up by counsel,  
7 including, I guess, what was in document 474, and this related  
8 to whether -- or asking whether there were any lay witnesses  
9 that would be giving an opinion about motive and so forth.

10 Let me ask, Mr. Villa, do you anticipate any of your  
11 lay witnesses to be opining as to motive or anything of that  
12 nature in their testimony?

13 MR. VILLA: I don't, Your Honor. You mean motives  
14 for other people's actions?

15 THE COURT: Yes.

16 MR. VILLA: No, I don't the anticipate that.

17 THE COURT: Okay. As I understand, Ms. Wiggins, that  
18 was the concern.

19 MS. WIGGINS: Yes, Your Honor, that was the concern.  
20 To the extent that was intended to be offered, we wanted the  
21 Court to be fully apprized of the topic.

22 THE COURT: Of course. Okay. There was the document  
23 425, and that was relating to the issue of double recovery.  
24 Here, too, Mr. Villa -- And it may be helpful to the Court, as  
25 I continue to work on jury instructions, I guess what I need

1 some clarity on is what damages you are seeking as to which  
2 statute. So under Title VII specifically what would be the  
3 damages you're seeking, and then under the New Mexico Human  
4 Rights Act which damages would you be seeking.

5 MR. VILLA: Yes, Your Honor. I filed the brief on  
6 damages which I think sets out that, but the damages under  
7 Title VII and the damages under the Human Rights Act to some  
8 extent will overlap. Our view of the double-recovery issue is  
9 that it becomes an issue if and only if the jury returns  
10 verdicts on two separate counts or claims that create a  
11 double-recovery issue.

12 But as I briefed in the damages issue, the Section  
13 1981A for Title VII, the 1991 amendment to the Civil Rights Act  
14 allows for certain compensatory damages that are spelled out in  
15 the statute as well as by case law. The Human Rights Act also  
16 allows for compensatory damages, which it doesn't specify like  
17 the 1981A act does, but compensatory damages I think are all  
18 the traditional damages allowed under New Mexico law, which I  
19 cited to a few different sources in that damages brief.

20 THE COURT: Okay.

21 MR. VILLA: And that's -- We filed a response to the  
22 double recovery. That's document 433, our response. And I can  
23 get you the number for the 245 damages brief which we filed.  
24 That was one of the ones you asked us to file by noon on  
25 Friday.

1 THE COURT: I did.

2 MR. VILLA: That's 428, Your Honor.

3 THE COURT: 428? So just tell me what you think is  
4 the overlap between the two statutes and the damages.

5 MR. VILLA: Well, Your Honor, I think that the  
6 compensatory damages to some degree will overlap. We do have  
7 different time frames.

8 THE COURT: Let me just ask you -- I apologize for  
9 interrupting -- if you can just be more specific as to the  
10 compensatory damages. In what form?

11 MR. VILLA: Well, I think you have her wages, you  
12 have her -- Those are the specific damages. You have emotional  
13 distress, you have, according to 1981, inconvenience, loss of  
14 enjoyment of life, and other nonpecuniary damages. I think we  
15 clarified for the Court that the other nonpecuniary damage we  
16 were seeking is damage to reputation.

17 THE COURT: You did. And so, again, where do you see  
18 the overlap between the NMHRA and the Title VII?

19 MR. VILLA: I think both statutes allow damages for  
20 both. I think that depending on how we ultimately word the  
21 jury instructions, there may be, for instance, emotional  
22 distress that's only associated with a particular claim. But  
23 generally speaking, I think they both overlap. I think that  
24 the claims are -- excuse me -- the elements might be a little  
25 different, but the damages would in large part completely

1 overlap.

2 THE COURT: Okay. Well, and I think you're right,  
3 and that's what we're working on, is the jury instructions,  
4 too, I think draw any distinction and make clear what the  
5 overlap may be.

6 It's a legitimate issue as to whether there can be  
7 and there shouldn't be double recovery, so that's the -- that's  
8 what we have to navigate.

9 MR. VILLA: Yes, Your Honor. And I think what I  
10 would say is the way I read the law, even the law cited by the  
11 defendants is, if the jury returns a verdict on Title VII and  
12 the Human Rights Act that is different, plaintiff has to elect  
13 her remedy. She can't -- She can't collect both.

14 THE COURT: Okay. The next issue, and this is  
15 brought up in document 426 relating to exhaustion of  
16 administrative remedies relating specifically to the  
17 retaliation claim.

18 Ms. Williams, did you have anything else to add on  
19 that?

20 MS. WILLIAMS: Well, Your Honor, I think there are  
21 admissions in the brief that they did not exhaust that, but it  
22 was an ancillary issue that came up during the proceeding, but  
23 that is not where the exhaustion would come in. It's what she  
24 brought to the EEOC in the three EEOC complaints she filed, and  
25 in that brief they say she did not bring it to the EEOC, that

1 the EEOC probed it a little and brought something up in the  
2 determination, but that doesn't mean that she exhausted that  
3 remedy through the process of making her Complaint.

4 THE COURT: Okay. I heard from counsel on this on  
5 Thursday. I don't want to exhaust this issue any more than  
6 necessary, but, Mr. Villa, anything else on it?

7 MR. VILLA: We did file a brief on Friday, Your  
8 Honor, on that topic, which is 426, but I think that the issue  
9 was brought to the EEOC, the EEOC investigated it, issued a  
10 determination, offered conciliation to the City. All of those  
11 are what the Jones case in the Tenth Circuit says is needed to  
12 exhaust on that issue.

13 THE COURT: Okay. So I looked at 426-3 and I looked  
14 at 426-5. One being the determination and the other being the  
15 charge. And so I see the box for retaliation being checked and  
16 the language in the determination. The way I view it is that  
17 the EEOC addressed retaliation. I'm going to find that  
18 Ms. Welch exhausted her retaliation claim before the EEOC. I  
19 understand what the objection is. And so that will be my  
20 ruling.

21 The next issue is brought to the Court in 427,  
22 document 427 on invited-error citations. I understand both  
23 parties have concerns about their position and their objections  
24 and concerns about waiving their objections by even joining or  
25 propounding a limiting instruction. Certainly that being the



1 case, however, the Court will still prepare a limiting  
2 instruction to at least guide the jury, if not instruct  
3 outright, on what evidence they may be able to consider and  
4 within what time frame. So this was discussed, as well. I'll  
5 note the position of the parties.

6 Okay. The next issue again relating to nonpecuniary  
7 damages, that just was simply brought forward to the Court on  
8 document 428. I don't think there's anything else to bring up  
9 on that.

10 Let me ask, the next issue, and that's relating to  
11 what I brought up last week and that's what was a newspaper  
12 article published in the Albuquerque Journal on May 9th.  
13 Anything else from counsel in this regard?

14 Mr. Villa?

15 MR. VILLA: Your Honor, are you talking about the  
16 newspaper article from last week?

17 THE COURT: I am.

18 MR. VILLA: No, nothing further.

19 THE COURT: All right. Ms. Williams?

20 MS. WILLIAMS: Your Honor, we'd like the jury to voir  
21 dire. I know that you instructed them not to read the paper  
22 and see media, but sometimes you don't get full compliance. So  
23 it might be best if we ask if anyone's seen that, because it  
24 definitely was biased.

25 THE COURT: Okay. That's kind of what I had in mind,

1 just, you know, out of an abundance of caution, perhaps. But  
2 let's just look down the road a little bit. In the event that  
3 a juror may have seen the article, what would be your proposal,  
4 Ms. Williams?

5 MS. WILLIAMS: Your Honor, because of the nature of  
6 the opinions in the article and that it was a one-sided  
7 article, we would ask that those jurors be excused for cause.

8 THE COURT: Okay. Well, that's -- I think it's a  
9 fair area to inquire, and so what I would want to do is inquire  
10 of the whole group and determine whether any of the members of  
11 the jury have, notwithstanding Judge Yarbrough's instructions,  
12 seen, read, or heard of any public newspaper, radio, television  
13 accounts relating to this case by show of hands, and then what  
14 I propose to do is recess and call each of those individual  
15 jurors into the courtroom and to inquire further. And then  
16 counsel may -- I plan to handle the questioning, but I'll allow  
17 counsel to ask anything that I don't ask. Okay? So that's the  
18 plan as to that issue.

19 I'm assuming, just going down the list of items to  
20 cover this morning, I'm assuming both parties would like the  
21 rule invoked.

22 MS. WILLIAMS: Yes, Your Honor.

23 MR. VILLA: Yes, Your Honor.

24 THE COURT: Okay. That's fine. And I'm going to  
25 leave it to counsel to enforce that particular rule. So that

1 will be up to you to guide that.

2 Okay. That's all I had, and so if there's nothing  
3 else we'll call in the jury.

4 MS. WILLIAMS: Your Honor, we took your concern to  
5 heart, that there were voluminous exhibits --

6 THE COURT: Yes.

7 MS. WILLIAMS: -- and we cut down our Exhibit A to  
8 the first four pages, rather than the multiple pages after  
9 that. We have a substitute for your book if you want us to put  
10 that in there or you can just literally pull out everything  
11 after the first four pages.

12 THE COURT: All right. Let me take a look at that.

13 Okay. Exhibit A being currently Terysa Welch's  
14 handwritten notes on a calendar. Why don't you go ahead and  
15 tender what you have. I'll just take out what I have, just  
16 make a complete substitution.

17 Mr. Villa, have you seen this?

18 MR. VILLA: I have, Your Honor. Well, I have the  
19 first four pages. And I received notice from Ms. Williams on  
20 Saturday that they intended to do that.

21 THE COURT: Okay. All right. We're going to take a  
22 two-minute recess just in time to line up the jury. When  
23 they're lined up, we'll reconvene, and then I'll call the jury  
24 out. Okay?

25

1 (Court stood in recess at 9:03 a.m. and resumed at  
2 9:06 a.m. as follows:)

3 THE COURT: I see that the jury's lined up. We just  
4 need to open the door and give them their green light.

5 (Jury in at 9:07 a.m.)

6 THE COURT: Okay. Good morning, everyone. Please be  
7 seated. Let me just ask just as you've taken your place,  
8 ladies and gentlemen, if I could just ask you to move this way  
9 two seats.

10 All right. Very well. Well, good morning, everyone.  
11 I'm Judge Gonzales, and I will be presiding over the remainder  
12 of this trial. I know you were assembled last week before  
13 Judge Yarbrough, and I appreciate his assistance, and I  
14 appreciate that you are here this morning.

15 Let me just pause right there and introduce a few  
16 people to you. First of all, I have a courtroom deputy, and  
17 this is Theresa Hall. Theresa will, as you may have met her  
18 this morning already, Teresa keeps track of a lot of the things  
19 going on in the courtroom during the course of this trial; she  
20 helps me do my job, and she will attend to your needs as this  
21 trial continues. Theresa works with me in Las Cruces where I  
22 preside normally.

23 This is Danna Schutte Everett. Danna is our assigned  
24 court reporter, and she also works in Las Cruces with me, and  
25 she'll be reporting everything that we do in the trial for the

1 next several days.

2 Off to my far left is Chris Baca. Chris is our staff  
3 attorney, and she helps the Court manage through the legal  
4 issues that come before the Court.

5 Okay. So let me just pause again and just allow the  
6 attorneys to introduce themselves as well as everyone at  
7 counsel table.

8 Let's begin with plaintiff.

9 MR. VILLA: Good morning, ladies and gentlemen. My  
10 name is Ryan Villa. My co-counsel is Richelle Anderson, and  
11 our client is Terysa Welch.

12 THE COURT: All right, Ms. Williams.

13 MS. WILLIAMS: Good morning. I'm Patti Williams. I  
14 represent the City of Albuquerque and Retired Chief Ray  
15 Schultz. With me is my co-counsel Lorna Williams. The  
16 representative for the City is Retired Deputy Chief Elizabeth  
17 Paiz. Chief Schultz has a full-time job out of state. He will  
18 not be here at counsel table. That doesn't mean he doesn't  
19 care about the case.

20 With us are our legal assistants, Trevor Wiggins and  
21 Trish Hernandez.

22 THE COURT: Okay. Thank you, counsel.

23 Ladies and gentlemen, let me just begin. In a few  
24 moments, I'm going to swear you all in. You have not done that  
25 yet. I know you were sworn in for purposes of jury selection,

1 but in a minute I'll be swearing you in for purposes of this  
2 trial.

3 Now, let me just acknowledge, I looked through the  
4 questionnaires that each of you prepared I guess weeks ago. I  
5 know where you all are here from. Some of you have traveled  
6 from out of town, and I can appreciate that Monday morning  
7 May 14th, you probably have other things that you would  
8 probably be doing, prefer to be doing even today and through  
9 the next several days, whether it's school, work, being with  
10 family, or whatever the case may be. Not necessarily  
11 preferring to be here.

12 You know, Judge Yarbrough may have explained a little  
13 bit about this to you when you assembled last Monday. You  
14 know, there's a couple of things that our country requires of  
15 us in service to the country. One is military duty, and it's  
16 not necessarily voluntary, except I think right now it's an  
17 all-volunteer military. Jury service is not necessarily  
18 voluntary. You're here because you are required to be here.  
19 That doesn't mean we don't appreciate or acknowledge how  
20 difficult it may be to comply with this part of your duty. So  
21 we do appreciate it.

22 I hope and I appreciate that counsel does, as well,  
23 that you may find this interesting, you may find it  
24 educational, and by the end of this process you will have  
25 looked at this experience as being altogether worthwhile. It's

1 important that we have a jury that is fair and impartial, and  
2 Judge Yarbrough and the attorneys last week, that's what they  
3 set out to do, is assemble a jury that for purposes of the  
4 issues in this case can decide them based on fairness,  
5 impartiality, without any bias. That's the whole point here.

6 All the while we seek to assemble a group of people  
7 that can do exactly that, and then in some ways kind of looks  
8 like our community. It's a cross-section, people from  
9 different backgrounds, people of different ages, and all kinds  
10 of other sort of differences in each of you. The common  
11 denominator, the commonality is you are here and you all have  
12 the same job to do.

13 I could sort of put it this way in terms of how you  
14 might see yourself in this role here; that if we assembled a  
15 jury of people with a lot of time on their hands, with probably  
16 nothing better to do, that probably is unreasonable, not  
17 necessarily something we can expect, and it is a group of  
18 people that just wouldn't look like the community at all. So  
19 you all are here with differences, lots of things that you'd  
20 like to be doing, I'm sure, but also we appreciate that you're  
21 here.

22 We'll in the coming days be looking to you, and at  
23 the end of the trial we'll be looking to you to render a  
24 decision that is fair based on the law that I will give you and  
25 based on the evidence that you will hear. So thank you for

1 being here.

2 Now, I said I'm going to swear you in shortly, and  
3 before I do that there is one item to cover with you in  
4 addition. Judge Yarbrough, you may recall, gave you a number  
5 of instructions. One instruction he may have given to you, I  
6 expect that he did, is to avoid any public newspaper, radio,  
7 television, Internet accounts that relate to this case. You  
8 were assembled last Monday, and so it's been a week, and so  
9 just by show of hands, and I can appreciate that even though  
10 there is that very clear instruction to avoid any newspaper,  
11 television, radio, Internet accounts, sometimes you can't help,  
12 because if you're reading the paper or listening to the radio,  
13 it may just come up.

14 So let me just ask you, by show of hands, even with  
15 the instruction that Judge Yarbrough gave to you last week, by  
16 show of hands, has anybody had an opportunity or just even had  
17 occasion to be privy to any sort of public account relating to  
18 this case?

19 Okay. I see one hand go up. Any other? Two. I'll  
20 ask you a little bit about it, but right now just by show of  
21 hands, and that's fine.

22 Any other jurors who may have heard, seen, read  
23 anything about the case?

24 Okay. No other hands have gone up.

25 All right. Two hands did go up. So this is what I'm



1 going to do, folks. I'm going to recess just for a few  
2 minutes, and I'm going to inquire a little further on this  
3 issue and allow the attorneys to just inquire a little further.  
4 After we're done with that, we'll get started on this trial  
5 just as soon as possible. So please remain patient. I'm going  
6 to ask you to retire to the jury assembly room and just remain  
7 there for a few minutes, and then I'll call you back in.

8 All right. Please rise for the jury.

9 (Jury out at 9:15 a.m.)

10 THE COURT: Okay. You may be seated, counsel.

11 I see, and what you probably saw two hands go up.  
12 One was Juror No. 7 and another was Juror Number 10, so my  
13 intent is to call in Juror No. 7 and inquire of that juror as  
14 to what the juror may have seen or read. Any objections to  
15 that? We discussed this already.

16 No objections.

17 All right. Theresa, will you call in Number 7. Just  
18 one at a time.

19 All right. And as Number 7 comes in, would you  
20 please rise for that member.

21 (Juror No. 7 entered the courtroom.)

22 THE COURT: Ma'am, would you please just approach.  
23 This is very informal. Please be seated.

24 JUROR NUMBER 7: Hi.

25 THE COURT: All right, ma'am. I had asked,

1 obviously, if any juror had seen any, read any, listened to any  
2 accounts of this case. So that would be my question to you  
3 specifically. What, if anything?

4 JUROR NUMBER 7: Last Thursday I saw the headline and  
5 immediately closed the paper and went back to my office.

6 THE COURT: Okay.

7 JUROR NUMBER 7: I did not read the article. I saw  
8 the headline (indicating) out.

9 THE COURT: Nothing about the article?

10 JUROR NUMBER 7: No. Absolutely not.

11 THE COURT: Okay. Even with the headline, is there  
12 anything, though, that what you did see --

13 JUROR NUMBER 7: No, sir.

14 THE COURT: -- however limited it may be, that may  
15 cause you to have decided this case?

16 JUROR NUMBER 7: No, sir, because it's the same stuff  
17 that -- I mean, it's the same headline basically that we got  
18 last Monday --

19 THE COURT: Okay.

20 JUROR NUMBER 7: -- just basically stating what the  
21 case was. It didn't say anything other than that, and that's  
22 what the judge told us last week, so no, it doesn't change  
23 anything at all.

24 THE COURT: Okay. All right. Thank you.

25 Let me just ask the attorneys.

1 Mr. Villa, do you have any questions?

2 MR. VILLA: No, Your Honor.

3 THE COURT: Ms. Williams?

4 MS. WILLIAMS: Do you think you can be fair and  
5 impartial --

6 JUROR NUMBER 7: Yes, ma'am. Absolutely.

7 MS. WILLIAMS: -- even seeing the headline? Thank  
8 you.

9 THE COURT: Okay. Thank you.

10 JUROR NUMBER 7: You bet.

11 THE COURT: You may return.

12 By the way, does everybody have fresh water in their  
13 pitchers?

14 MS. WIGGINS: Yes, Your Honor. Thank you.

15 MR. VILLA: Yes, Your Honor.

16 THE COURT: Okay.

17 (Juror Number 10 entered the courtroom).

18 THE COURT: Okay. Ma'am, would you please come  
19 forward to the front of the stand.

20 JUROR NUMBER 10: Here?

21 THE COURT: That would be better. Perhaps the  
22 attorneys will see and perhaps hear a little better.

23 All right. You may be seated. Good morning once  
24 again.

25 JUROR NUMBER 10: Good morning.

1 THE COURT: So I asked the question, ma'am, about  
2 newspaper accounts or things of that nature and I saw your hand  
3 go up. Nobody's in trouble here. We just wanted to inquire a  
4 little further about what, if anything, you did hear or what  
5 you may have seen or read.

6 JUROR NUMBER 10: It was in Thursday's paper. It was  
7 on the front page. I saw the headline, and I realized what it  
8 was. I did not read it. I cannot tell you what was in it. I  
9 didn't even know what the name of the person was, so I still  
10 don't, except that I heard it today.

11 THE COURT: Okay. Even with what you saw, if it was  
12 just the headline, is there anything about what you read or saw  
13 that may cause you to have judged, state an opinion to yourself  
14 or even prejudge the case at all?

15 JUROR NUMBER 10: I don't think so, because I can't  
16 even tell you what the headline was right now, and I can't even  
17 tell you who it was that wrote the article.

18 THE COURT: Okay. Ma'am, just a moment. I'm going  
19 to give the attorneys a chance to ask you any questions they  
20 have. All right?

21 JUROR NUMBER 10: Sure.

22 MR. VILLA: No questions, Your Honor.

23 MS. WILLIAMS: No questions, Your Honor.

24 Thank you for your candor.

25 THE COURT: All right. Thank you, ma'am. You may

1 return, and in a moment I'll just call you all back in here.

2 JUROR NUMBER 10: Okay. Thank you.

3 (Juror Number 10 left the courtroom.)

4 THE COURT: All right. Just for the time being, you  
5 may be seated. Ms. Williams, Mr. Ryan, anything about the  
6 newspaper article relating to Number 7 or Number 10? Is there  
7 anything that you want to bring up?

8 MR. VILLA: No, Your Honor.

9 MS. WILLIAMS: No, Your Honor. Thanks for the  
10 opportunity to talk to them.

11 THE COURT: You're welcome. Okay.

12 And I'm reminded to refer to plaintiff's counsel as  
13 Mr. Villa, not Mr. Ryan. I apologize.

14 MR. VILLA: That's okay, Judge.

15 (Jury in at 9:21 a.m.)

16 THE COURT: All right. Please be seated. All right.  
17 Once again, thank you for your patience, ladies and gentlemen.

18 Now, we have some days set aside for this trial, but  
19 when Judge Yarbrough selected you he and the attorneys  
20 estimated that it could be as many as ten days, so two weeks.  
21 I can tell you the attorneys have assured this Court that they  
22 will endeavor as much as possible to wrap this case up just as  
23 soon as possible so that we're not using any more of your time  
24 than absolutely necessary. These things can take time, but in  
25 everything they'll be attempting to be as efficient and

1 expedient and mindful of your time, as well.

2 So please rise.

3 All right. Please raise your right hand.

4 (Jury sworn.)

5 THE COURT: All right. You may be seated.

6 All right. Members of the jury, now that you have  
7 been sworn, I will give you some preliminary instructions to  
8 guide you during this trial. You are the judges of the facts.  
9 It will be your duty to find from the evidence what the facts  
10 are. You will then apply the law to the facts. I will  
11 instruct you on the applicable law later. You must follow that  
12 law whether you agree with it or not.

13 Nothing that I say or do is intended to indicate what  
14 your verdict should be. It is your duty to determine the  
15 facts, and in doing so you must consider only the evidence I  
16 admit in this case. Now, the term "evidence" includes the  
17 sworn testimony of the witnesses and the exhibits admitted into  
18 the record. The evidence from which you will find the facts  
19 will consist of the testimony of witnesses, documents, and  
20 other things received as exhibits, and any facts that the  
21 lawyers agree to or that I instruct you to find. You may  
22 consider either direct or circumstantial evidence.

23 Now, direct evidence is the testimony of one who  
24 asserts actual knowledge of a fact, such as an eyewitness.  
25 Circumstantial evidence consists of proof of facts or

1 circumstances which give rise to a reasonable inference of the  
2 truth of the fact sought to be proved. The law makes no  
3 distinction between the weight to be given to either direct or  
4 circumstantial evidence.

5 Now, while you should consider only the evidence in  
6 this case, you are permitted to draw such reasonable inferences  
7 from the testimony and exhibits as you feel are justified in  
8 the light of common experience. In other words, you may make  
9 deductions and reach conclusions which reason and common sense  
10 lead you to draw from the facts which have been established by  
11 the testimony and the evidence in this case. Now, certain  
12 things are not evidence and must not be considered by you. For  
13 example, statements, arguments, and questions by lawyers are  
14 not evidence. Also, objections to questions are not evidence.  
15 Lawyers have an obligation to their clients to object when they  
16 believe evidence being offered is improper under the Rules of  
17 Evidence. You should not be influenced by the objection or by  
18 my ruling on it. If the objection is sustained, ignore the  
19 question. If I instruct you that some item of evidence is  
20 received for a limited purpose only, you must follow that  
21 instruction. Also, testimony that I have excluded or tell you  
22 to disregard also is not evidence and must not be considered.  
23 Anything that you may have seen or heard outside the courtroom  
24 is not evidence and must be disregarded. You are to decide the  
25 case solely on the evidence presented here in court. It will

1 be up to you to decide which witnesses to believe, which  
2 witnesses not to believe, and how much of any witness's  
3 testimony to accept or reject.

4 When determining the weight to be given to the  
5 testimony of a witness, you may consider the witness's  
6 interest, if any, in the outcome of the case; the witness's  
7 relationship to the parties; the witness's manner while  
8 testifying; any bias or prejudice the witness may have; and  
9 whether the testimony of the witness was impeached by proper  
10 statements the witness made or by other evidence.

11 Now, this is a civil case involving alleged sex  
12 discrimination, employment discrimination, and retaliation.  
13 Plaintiff, Terysa Welch, has the burden of proving every  
14 essential element of her claims by a preponderance of the  
15 evidence. Now, this means that Ms. Welch has to produce  
16 evidence which, considered in light of all the facts, leads you  
17 to believe that Ms. Welch's claims are more likely true than  
18 not. Evenly balanced evidence is not sufficient.

19 Now, in this civil case Ms. Welch brings the  
20 following claims for compensatory damages. First, sexual  
21 harassment, sex discrimination, and retaliation claims against  
22 defendant City of Albuquerque, or what we'll refer to as "the  
23 City," brought under federal law, specifically Title VII of the  
24 Civil Rights Act of 1964, and under the New Mexico Human Rights  
25 Act; and sex discrimination and retaliation claims against



1 defendant Raymond Schultz brought under the New Mexico Human  
2 Rights Act.

3 Ms. Welch's claims arise from her employment as a  
4 detective in the Albuquerque Police Department, and we'll just  
5 refer to that as APD, in the Repeat Offender Project, known as  
6 ROP, and thereafter. Mr. Schultz was the Chief of APD and in  
7 Ms. Welch's chain of command. In this case the actions of a  
8 City supervisor are the actions of the City.

9 Ms. Welch's first claim against the City is for  
10 sexual harassment by her supervisors and coworkers in violation  
11 of Title VII. This alleged sexual harassment occurred between  
12 May 2004 and 2012. Ms. Welch has the burden to prove by a  
13 preponderance of the evidence that the supervisors or coworkers  
14 subjected her to unwelcome harassment; that the harassment was  
15 based on her sex; and that a reasonable person would find the  
16 harassment hostile or abusive, and Ms. Welch perceived it to be  
17 so. She also has the burden to show by a preponderance of the  
18 evidence that the harassment was sufficiently severe or  
19 pervasive so as to alter the conditions of her employment and  
20 create an abusive working environment.

21 Ms. Welch must further show by a preponderance of the  
22 evidence that the City or management-level City employees knew  
23 or should have known of the harassment by her coworkers, but  
24 failed to take prompt and remedial action.

25 Ms. Welch's second claim against the City is for sex

1 discrimination in violation of Title VII. The alleged sex  
2 discrimination occurred between October 2004 -- excuse me --  
3 October 24th, 2008, and 2012. To succeed on this claim,  
4 Ms. Welch must prove by a preponderance of the evidence that  
5 her sex was a motivating factor in the City's decision to take  
6 an adverse employment action against her.

7 Ms. Welch's third claim against the City is for  
8 retaliation in violation of Title VII. The alleged retaliation  
9 occurred between October 24th, 2009, and 2012. To succeed on  
10 to claim, Ms. Welch must prove by a preponderance of the  
11 evidence that she engaged in protection -- excuse me --  
12 protected opposition to discrimination; that the City took an  
13 adverse action against her; and that a causal connection exists  
14 between the protected opposition and the adverse action.

15 Ms. Welch's fourth claim against the City is for  
16 sexual harassment under the New Mexico Human Rights Act. Like  
17 the Title VII claim for sexual harassment, the alleged sexual  
18 harassment occurred between May 24 -- May 2004 -- excuse me --  
19 and 2012. To succeed on this claim, Ms. Welch must prove by a  
20 preponderance of the evidence that the harassment was based on  
21 sex; that she was subject to a hostile environment in which the  
22 offensive conduct had the purpose or effect of unreasonably  
23 interfering with Ms. Welch's work performance or creating an  
24 intimidating, hostile, or offensive working environment; and  
25 that a reasonable person would find that -- the work

1 environment hostile or abusive, and that Ms. Welch did perceive  
2 the work environment as being hostile or abusive.

3 Ms. Welch's fifth claim against the City is for sex  
4 discrimination in violation of the New Mexico Human Rights Act.  
5 Ms. Welch also brings a claim against Mr. Schultz for sex  
6 discrimination, in violation of the New Mexico Human Rights  
7 Act. As with the Title VII sex discrimination claim, the  
8 alleged New Mexico Human Rights Act sex discrimination claims  
9 occurred between October 24th, 2008, and 2012. To succeed on  
10 both of these claims, Ms. Welch must prove by a preponderance  
11 of the evidence that she was otherwise qualified in November  
12 2011 to be promoted to an APD Sergeant; that the City and  
13 Mr. Schultz took an adverse employment action against her; and  
14 that Ms. Welch's sex was a motivating factor in the City and  
15 Mr. Schultz's decision to take an adverse employment action  
16 against her.

17 Ms. Welch's sixth and final claim against the City is  
18 for retaliation in violation of the New Mexico Human Rights  
19 Act. Ms. Welch's second claim against Mr. Schultz is also for  
20 retaliation in violation of the New Mexico Human Rights Act.  
21 The alleged retaliation, like the Title VII retaliation claim,  
22 occurred between August 24th, 2009, and 2012.

23 To succeed on these claims, Ms. Welch must prove by a  
24 preponderance of the evidence that she engaged in protected  
25 activity; that she suffered an adverse employment action by the

1 City and Mr. Schultz; and that there is a causal connection  
2 between the protected activity and the adverse employment  
3 action.

4 Defendants deny what Ms. Welch says about sexual  
5 harassment, sex discrimination, and retaliation, and denies her  
6 contentions.

7 Defendants assert that Ms. Welch was not subject to  
8 sexual harassment by her supervisors or coworkers. Defendants  
9 also contend that they did not take any adverse employment  
10 action against Ms. Welch. Defendants maintain that nothing  
11 they did regarding Ms. Welch was done in retaliation for  
12 engaging in protected opposition to discrimination. Moreover,  
13 defendants maintain that Ms. Welch's sex was not a motivating  
14 factor in any decision they made.

15 Now, during trial, it may be necessary for me to talk  
16 with the lawyers out of the hearing of the jury either by  
17 having a bench conference here while the jury is present in the  
18 courtroom or by calling a recess. Now, the purpose for these  
19 conferences is to decide how certain evidence is to be treated  
20 under the rules of evidence and to avoid confusion and error.

21 Now, during the trial and until you have rendered a  
22 verdict, do not discuss this case with anyone or permit anyone  
23 to discuss it with you or even in your presence. This rule  
24 about not discussing the case includes discussions even with  
25 members of your family or your friends. This rule also

1 includes electronic communications. So, you may not  
2 communicate with anyone about the case on your cell phone,  
3 through e-mail, BlackBerry, iPhone, any text messaging, or on  
4 any social networking website, including Facebook, Myspace,  
5 LinkedIn, YouTube, and things of that nature. If any person  
6 attempts to talk to you or communicate with you about this  
7 case, either in or out of the courthouse, you should  
8 immediately report that to me.

9           The attorneys and parties are not supposed to talk to  
10 the jurors even to say hello. So, if you happen to see them  
11 outside the courtroom, they will not speak to you. Please do  
12 not be offended by this. They will only be acting in  
13 accordance with my instructions.

14           And also, until you retire at the end of this case to  
15 begin your deliberations, please do not talk about this case  
16 with each other. That is very important. Your deliberations  
17 are only supposed to be after the case is given to you for  
18 deliberation. That will be after all of the evidence.

19           You may not consider anything you may have read or  
20 heard about this case outside the courtroom. During trial, you  
21 must avoid any news accounts about this case, whether it is on  
22 television, the radio, or the Internet or in the newspaper. If  
23 you happen to see or hear anything in the news about this  
24 trial, please let a member of my staff know and we'll determine  
25 what the steps are from there.

1           Now, please do not attempt any steps, research, or  
2 experiments, and do not visit any location involved in this  
3 case. It would be difficult or impossible to duplicate  
4 conditions showed by the evidence; therefore, your results  
5 would not be reliable. Such conduct would also run contrary to  
6 the rule that your verdict must be based solely on the evidence  
7 presented to you in this courtroom. You also must not conduct  
8 any independent research about the case, the matters in the  
9 case, and the individuals or municipality involved in this  
10 case. In other words, you should not consult dictionaries,  
11 reference materials, search the Internet, any website, blogs,  
12 or use any other electronic tools to obtain information about  
13 this case or to help you decide the case. Nevertheless, in  
14 your deliberations, you need not ignore your background,  
15 including professional, vocational, and educational experience.

16           Please keep an open mind until the entire case has  
17 been completed and submitted to you. Your special  
18 responsibility as jurors requires that throughout the trial you  
19 exercise your judgment impartially and without regard to any  
20 sympathy, bias, or prejudice.

21           Now, if you wish, you may take notes during the  
22 trial. And I think notebooks have been provided to you, as  
23 well as pencils. Your notes, however, should not take the  
24 place of your independent memory of the evidence. When taking  
25 notes, please remember the importance of paying close attention

1 to the trial. Listening to and watching witnesses during their  
2 testimony will help you to assess their appearance, behavior,  
3 memory, and whatever else bears on their believability.

4 At each recess, please take the notes with you to the  
5 jury room. At the end of the day, please leave your notes in  
6 the jury room. The courtroom deputy will store your notes and  
7 return them to you when trial resumes. The notes are for your  
8 own personal use. They are not to be read or given to anyone  
9 else before or during deliberations. And at the end of the  
10 trial, the notes will be collected and then destroyed.

11 Now, even though the court reporter is making a  
12 report of these proceedings, a copy of the transcript will not  
13 be available to you for your use during deliberations. The  
14 exhibits will be available to you, however, during your  
15 deliberations.

16 And one final point. Both parties, of course, are  
17 entitled to a fair trial. Fairness requires your complete  
18 attention throughout this trial. You must listen carefully to  
19 all the testimony, carefully observe witnesses and see the  
20 evidence. Now, this is essential for your deliberation at the  
21 end of this trial when the case is in your hands. I, of  
22 course, want each of you to feel comfortable and we will take a  
23 midmorning break, we'll take a lunch break, and then we'll take  
24 an afternoon break. My goal here is to recess for the day as  
25 close to 5:00 as possible. It may depend on where we happen to

1 be with a witness. It may run a little bit long. I just ask  
2 you to be patient. But we'll see if we can get that done each  
3 day by 5:00.

4 I also invite you during the course of the day as you  
5 need to, to stand up and stretch. You know, it's natural and  
6 reasonable, I think, to expect, especially after lunch, for  
7 everyone, including yourselves, to feel a little sleepy. I  
8 think that may be a good time to just remember what I've  
9 suggested, is if you need to, we have provided water to you,  
10 stretch, move out if you need to. That's fine. I would just  
11 ask that as you do so, please be mindful of the jurors sitting  
12 behind you, particularly so they can continue to see and hear  
13 the evidence as necessary.

14 Now, this concludes my preliminary instructions. The  
15 trial will begin at this time. First, each party will give an  
16 opening statement. About the opening statement. It is not  
17 evidence and it is not argument. It is simply an outline that  
18 the parties will provide, and it's offered to help you follow  
19 the evidence.

20 Next, Ms. Welch will present her witnesses and her  
21 exhibits. Then defendants will also present their witnesses  
22 and their exhibits. Each side may cross-examine witnesses  
23 presented by the other side. And after, I will give you the  
24 instructions on the law and the lawyers will make their closing  
25 arguments to summarize and interpret this evidence for you.



1 That will be at the conclusion of this case.

2 I'll remind you that if my final instructions differ  
3 from these instructions, you must follow the final  
4 instructions.

5 THE COURT: All right. Opening statements, Counsel.

6 MR. VILLA: Thank you, Your Honor.

7 THE COURT: Mr. Villa, I may have asked, do you need  
8 a five-minute time warning?

9 MR. VILLA: I think -- I'll be happy to take one, but  
10 I'll keep my time also.

11 THE COURT: All right.

12 MR. VILLA: May it please the Court?

13 THE COURT: Counsel.

14 MR. VILLA: Ladies and gentlemen of the jury. Good  
15 morning. Thank you for your time.

16 What I'm showing you now on your screen is a Fitness  
17 Assessment of Terysa Welch's from May 2004, in which her  
18 Sergeant, her supervisor wrote on there on the left side "I  
19 want to have children with you!" Now, this wasn't an isolated  
20 incident, ladies and gentlemen. Her supervisor, the supervisor  
21 over her unit, ROP unit throughout the time he was her  
22 supervisor and later her Lieutenant sexually harassed Terysa  
23 Welch. This is just one example of the beginning.

24 He constantly made comments about her, commented  
25 about her looks, said things about the clothes she was wearing,

1 referred to her body as being tight as a drum, made comments or  
2 sounds like ummm, looking at her body, especially in the  
3 summertime when it was warm, and constantly told her -- or told  
4 her on a number of different occasions that if he wasn't  
5 married, he would be pursuing her.

6 And it got to the point that she was very  
7 uncomfortable around him, tried to avoid him, realized that he  
8 didn't do it when other detectives or other individuals in the  
9 unit were around, and so she tried to have other people with  
10 her when she was in contact with her Sergeant and avoided him.  
11 In fact, his cubicle was close to an exit door, and she would  
12 often avoid that exit door simply to avoid her Sergeant, Robert  
13 Smith.

14 And you have to understand the way it worked at the  
15 time in this unit. The ROP unit, the Repeat Offender Project,  
16 was a group of detectives that went after the worst of the  
17 worst in Albuquerque. Repeat offenders. That's why it's  
18 called the Repeat Offender Project, or ROP. It was within the  
19 larger division of APD called SID, or the Special  
20 Investigations Division. And the Sergeant at the time from  
21 2004 to 2006, 2007 of ROP was Sergeant Robert Smith. And he  
22 had known Terysa. They were detectives in the same unit  
23 earlier in time, but she hadn't had this experience with him  
24 yet.

25 And when Terysa got into ROP, it was an incredibly

1 competitive process. There were about 15 individuals who were  
2 applying for ROP. They had to go through a fitness evaluation,  
3 shooting, a written test, an oral test. It was a coveted  
4 position. And Terysa coveted it since the day she went to the  
5 Academy. As a matter fact, since she was a young girl, she  
6 wanted to be in law enforcement. Her grandfather was a Chief  
7 of Police in a small town in Montana, and ever since she was a  
8 young girl, that's what she wanted to do. And she was used to  
9 playing with the boys, didn't have any problem with that,  
10 understood that it was a male-dominated profession. In fact,  
11 there were only two women that graduated in her Academy in  
12 1997. And from the time she began to be a police officer at  
13 the Academy when the ROP team came in, the ROP unit came in and  
14 talked to them, she decided, That's what I want to be, that's  
15 my goal, I want to be in the ROP unit.

16 When 2004 finally rolled around, she had already  
17 applied for ROP previous times, went through the process that I  
18 told you about, and made it in. She was elated. She loved the  
19 job. Unfortunately, she didn't know what was going to happen  
20 with Sergeant Robert Smith.

21 Now, as I told you, Sergeant Smith got promoted  
22 around 2006, 2007 and he became Lieutenant. Lieutenant in SID  
23 isn't just in charge of ROP. The Lieutenant is in charge of  
24 many different divisions in SID. So Terysa didn't see  
25 Lieutenant -- now Lieutenant Smith very often anymore, but he

1 still did the things I told you about, still made comments when  
2 he had the opportunity. But when he was the Sergeant, he was  
3 in charge of ROP he was. That's who Terysa and everybody else  
4 answered to, that's who controlled, that's who was the  
5 supervisor.

6 And as you heard from the judge, in a lawsuit against  
7 the City for sexual harassment, the supervisors are the City.

8 Terysa also has claims in addition to the sexual  
9 harassment claims for discrimination and retaliation. And  
10 that's what this case is about, sexual harassment, sexual  
11 discrimination, and retaliation.

12 Now, for harassment and discrimination, which she has  
13 to prove, is that her sex or gender was a motivating factor in  
14 the actions. And what you'll hear about when she got to ROP is  
15 there was hostility. So sexual harassment is not just the  
16 things that you saw Sergeant Smith doing, but also other  
17 hostility that's based on her sex, based on her gender. And  
18 you'll hear that there were individuals in the unit, in the ROP  
19 unit, like Kevin Gagne who never really liked Terysa, they  
20 never got on along, they always clashed. There were other  
21 individuals who were vocal about Terysa when she was selected  
22 in the ROP unit. They didn't want Terysa in the unit. And  
23 there were some that she got along just fine with and worked  
24 well with and didn't have any problems.

25 But she experienced hostility from the beginning she

1 came into ROP, not only from her Sergeant, but from her fellow  
2 detectives. One of the things that you'll hear about, when  
3 you're in ROP, there always has to be a Sergeant. ROP is a  
4 unit that can be activated at any time, so you'll always have a  
5 detective on call, you'll have a secondary detective for on  
6 call, and even the whole unit can sometimes be activated if  
7 there's a high-profile situation, a dangerous fugitive, a  
8 homicide, and so these detectives were essentially on call the  
9 entire time.

10 They didn't wear uniforms. They dressed in street  
11 clothes so that people couldn't identify them as police. They  
12 drove around in vehicles. They were not recognizable as police  
13 vehicles. And they needed to be ready even if they weren't at  
14 the office to take a call and be activated at any time, and  
15 because of that there always needed to be a Sergeant. And  
16 sometimes the Sergeant was on vacation or sick leave or taking  
17 the day off and things like that, so there needed to be what's  
18 called an Acting Sergeant, and an Acting Sergeant was typically  
19 one of the detectives in the unit who when they became Acting  
20 Sergeant essentially were the supervisor in charge of the unit  
21 until the regular Sergeant came back.

22 And throughout the time that Terysa was in ROP she  
23 was never made an Acting Sergeant. It was always somebody  
24 else, one of the other men, and throughout the time she was in  
25 ROP, she was the only female detective. But when you are the

1 Acting Sergeant for longer periods of time, you get better pay,  
2 and, of course, you're the supervisor, everybody must respond  
3 to you.

4 Now, I told you that in 2007 Lieutenant Smith,  
5 formerly Sergeant Smith became a Lieutenant. In 2007, Terysa  
6 had a very traumatic incident occur in her life. She was  
7 dating a fellow police officer, David Maes, and David Maes --  
8 and living with him, and they were engaged to be married, and  
9 David Maes was somebody that kept who he really was from  
10 Terysa. It turned out he was not a good person. He got  
11 charged and arrested for having raped or having sex with a  
12 person that he had in custody. And this happened in about  
13 October of 2007.

14 And Terysa was at work. She didn't know about it,  
15 she hadn't heard about it. She got a call from Lieutenant Rob  
16 Smith, and he was asking if she was there at the station. She  
17 said yes. He came down, grabbed her hand, and said, "Let's go  
18 out to the parking lot."

19 They go out to the parking lot. He asks her if she  
20 wants to have coffee or get breakfast. She was very concerned.  
21 She knew something was wrong, she just wanted to know what was  
22 wrong. And Lieutenant Rob Smith then grabbed her, hugged her  
23 very, very tightly, still hadn't told her what was going on,  
24 and Terysa insisted, you know, "I want to know what's going on.  
25 Tell me what's going on," and he told her.

1           And during this time that he told her, he was very,  
2           very pushy. He said, "Let me take you home. I'll take you  
3           home. I'll take care of you." Almost in a sexual manner. And  
4           he repeated the statement to her that he had made many times,  
5           that if she wasn't married -- excuse me -- if he wasn't  
6           married, he would be pursuing her. He said this to her during  
7           this extremely traumatic period in her life.

8           And after he finally told her what was going on, she  
9           took a week off, went to Montana to be with her family, and  
10          during that period of time Lieutenant Smith called her every  
11          day, and she continued to feel very uncomfortable by this  
12          conduct of his.

13          Well, she got back, and as things had gone with the  
14          ROP unit from the time she was there through about 2009, she  
15          continued to have problems with some of the individuals in the  
16          ROP unit. Not all of them. Kevin Gagne being one of them.  
17          And the new Sergeant, Sergeant David Hubbard. They had  
18          conflicts throughout the time that he became the Sergeant once  
19          Sergeant Smith, Rob Smith promoted to Lieutenant. And it was  
20          certainly no secret that they didn't like each other.

21          In July of 2009, Terysa and another detective, Mike  
22          Hill, were with Kevin Gagne, someone that Terysa had some  
23          problems with, and at the time Kevin Gagne was the Acting  
24          Sergeant, and they had just completed an operation, I believe  
25          they arrested somebody, they were sitting around talking, and

1 Acting Sergeant Gagne told Detective Hill and Detective Welch  
2 to be at the station tomorrow, the next day, to meet up, they  
3 were going to meet up and then the whole ROP team was going to  
4 go to the range. A lot of times they would go to the shooting  
5 range because they had to shoot and practice. They were  
6 qualifying and shooting all the time.

7 So following those orders Detective Welch, Terysa,  
8 went to the main station, and Mike Hill was there, the other  
9 detective that was with her, but she realized after doing some  
10 time sheets and sort of waiting for everybody to show up, she  
11 realized nobody was there, so she talked to Detective Hill.  
12 Detective Hill decided to call Sergeant Hubbard, and they  
13 realized that the ROP team was all out at the range. They had  
14 gone straight there. They weren't meeting at the station.

15 And after that happened, Sergeant Hubbard gave Terysa  
16 what we're going to call a punctuality memo. And the  
17 punctuality memo referred to her missing this training at the  
18 range as well as to a previous incident that she missed a  
19 briefing, but she had actually comped out or told at that time  
20 a different Acting Sergeant that she had a personal  
21 appointment, she was going to be comped out for this period of  
22 time, and so she wasn't at a briefing. But Sergeant Hubbard  
23 put that in the memo, that missed briefing and the missed  
24 training and gave her this punctuality memo, which would go in  
25 his file. And Sergeants would keep files on their detectives



1 that they could pass along to the next Sergeant or keep for  
2 themselves as the way things go in the Police Department.

3 Well, at that point, Terysa had had it. She had  
4 enough. She was a very punctual person, and took offense to  
5 the fact that she was accused of this when, in her view, she  
6 didn't do anything wrong. She comped out for the briefing, she  
7 followed the orders of Acting Sergeant Gagne to go to the  
8 police station, and Detective Mike Hill didn't get a  
9 punctuality memo. So she was upset about that as well, and she  
10 tried to address this with Sergeant Hubbard, and Sergeant  
11 Hubbard didn't want to hear her.

12 And because the Police Department is a paramilitary  
13 organization, what you must do in that situation is go up the  
14 chain of command. And next in the chain of command from  
15 Terysa, from her Sergeant was Lieutenant Smith. So in order to  
16 essentially challenge this memo, she had to go up the chain of  
17 command.

18 So after trying to address it with Sergeant Hubbard  
19 over the phone, essentially, she asked Lieutenant Smith if he  
20 could meet -- she could meet with him about it, and he said  
21 yes.

22 Well, that was in the morning of the day that they  
23 went to the firing range, a different day, and then so the next  
24 day she went to Lieutenant Smith's office, and walked in the  
25 office, she had the memo, she had the comp slip for the

1 briefing that she missed ready to explain to him what happened,  
2 and instead of Lieutenant Smith listening to Terysa tell what  
3 happened, he immediately started talking about her performance,  
4 her performance in ROP and whether she was up to snuff.

5 Now, these detectives get performance evaluations  
6 every year and they also get monthly reports on their -- the  
7 things they've done for the month, and throughout Terysa's  
8 career she had never, ever received any bad marks on any  
9 performance evaluation, nobody had ever said "Hey, you're not  
10 performing the way we want you to." This had never come up  
11 before. And Terysa was a bit taken aback.

12 And Lieutenant Smith during this meeting was being  
13 very forceful and talking about these performance issues that  
14 Terysa was not prepared to talk about. And she quickly told  
15 him that she might file a claim, an EEOC claim because she felt  
16 like the treatment she was receiving at ROP, the memo that she  
17 got was unfair.

18 And Lieutenant Smith, of course, knowing the history  
19 they've had since 2004, said to her, "Well, I hope I've got  
20 some loyalty coming my way." And the comment referred to what  
21 probably was, it was Smith in the end who wanted Terysa or  
22 wanted a female in the ROP unit because he saw a female as an  
23 asset to the ROP unit. And I guess as you'll hear, he wanted  
24 Terysa in the ROP unit for other reasons.

25 But he told her "I hope I have some loyalty coming my

1 way" and told her "You can't do it, you can't file an EEOC  
2 claim, I won't let you."

3 Now, Lieutenant Smith's going to deny he said that.  
4 He's going to admit that he wrote this, and he'll tell you  
5 that, "Well, that's just my sense of humor, and Terysa and I  
6 always engaged in playful banter and flitting and those sorts  
7 of things," which you'll hear the evidence about and you decide  
8 for yourself whether you think that's true.

9 One thing that Terysa did say to Sergeant Smith and  
10 later Lieutenant Smith when he kept saying things to her about  
11 "Gosh, if I wasn't married, I would be pursuing you" or other  
12 things that he liked to talk about, Terysa to deflect would  
13 often say "Maybe in the next life," you know, to get him to  
14 stop talking about those types of things.

15 Now, after talking to Lieutenant Smith about the  
16 memo, Terysa continued to follow the chain of command and went  
17 to the next person up. It used to be called the Captain. Now  
18 it's called the Commander. But that's who's over Lieutenant  
19 Smith, and that was Joseph Hudson. And Joseph Hudson, who was  
20 not mean or rude to Terysa the way Lieutenant Smith was, said,  
21 you know, "Rob, Rob Smith, he's probably going to be the next  
22 Commander, so I'm not sure you want to do this. I think you  
23 should tell him that you were wrong and he was right and fall  
24 on your sword. You're not going to win your EEOC claim. You  
25 just shouldn't do it." And after that meeting Terysa, of

1 course not being satisfied, ultimately decided she was going to  
2 file an EEOC claim.

3 But before that happened, it wasn't certainly lost on  
4 the ROP unit that Terysa had complained up the chain of command  
5 about this punctuality memo and her treatment, and just a day  
6 or so later, maybe two days later Sergeant Hubbard continued  
7 with hostility towards Terysa and he did something that was  
8 very, very dangerous.

9 One of the things that often happened in the ROP unit  
10 was warrant packets would get handed out, and they would hand  
11 them out to partners of two different detectives and say,  
12 "Here's a subject who's wanted, you know, go find him and get  
13 him." And he handed a packet to Terysa without assigning her  
14 backup or a partner, which is life-threatening. And she asked,  
15 "Well, what about backup?" And he said, "Let me know if you  
16 need anything."

17 And this, of course, solidified for Terysa that she  
18 was not in a good place, she was not in a safe place, it was a  
19 hostile environment, and she wasn't going to get relief from  
20 her supervisor, so she filed an EEOC Complaint on August 24th,  
21 2009, with the EEOC, the federal EEOC, claiming a hostile work  
22 environment, gender discrimination, and she also took that  
23 Complaint to a Lieutenant, Lieutenant Doug West in Internal  
24 Affairs hoping that Lieutenant West could also help. And  
25 Lieutenant West assured her that her Complaint would stay

1 confidential, he would only tell the Chief, Chief Schultz,  
2 Chief Raymond Schultz, and that they would then look into it.

3 Well, it became very clear to Terysa within the next  
4 few days that her Complaint had not been kept confidential and  
5 many, many people knew about it; people knew the number of  
6 pages that it was she had written up, they knew details about  
7 it more than just Chief Schultz and Lieutenant Doug West.

8 Now, the Department did remove briefly Sergeant  
9 Hubbard and Robert Smith from the ROP unit after the Complaint  
10 was filed, and none other than Kevin Gagne at the time became  
11 the Acting Sergeant and announced over all of the ROP radio  
12 that Smith and Hubbard were being moved. This occurred in  
13 about late August.

14 And it didn't last very long. Both were brought back  
15 to the unit within just a couple of months. They had not --  
16 The Department, as you'll find out, had not addressed any of  
17 Terysa's claims with them when they came back. And Commander  
18 Hudson, who was still overseeing this Special Investigations  
19 Division was intent on disciplining Terysa. As a matter of  
20 fact, in November, this is just a couple of months after she  
21 filed her complaint, he wrote her a memo saying that Sergeant  
22 Hubbard, who had now been back at the unit, and another  
23 detective, Detective J.R. Potter, who Terysa had accused as  
24 well in this EEOC Complaint -- and he was an individual that  
25 was friends with Robert Smith since they were 12 years old.

1 And as a matter of fact, you'll hear that during the  
2 times that they were together in the unit, Detective Potter and  
3 Robert Smith would talk often about the size of their penis in  
4 front of Terysa Welch. And they accused Terysa of not covering  
5 them during an operation or dropping out of surveillance. And  
6 Commander Hudson wrote Terysa a memo making her respond to  
7 these allegations. And then shortly after that, because Smith  
8 was back in the unit, Terysa was walking down the hall one time  
9 going to the copy machine and Lieutenant Smith comes back,  
10 walking down the hall toward her, and he walks down the hall  
11 towards her like he's going to knock her over.

12 MS. WIGGINS: Objection. Argumentative.

13 MR. VILLA: This is just what the facts will show,  
14 Your Honor.

15 THE COURT: Well, I guess if you just qualify it that  
16 way.

17 I'll just remind the jury that the opening statement  
18 is not evidence. There will be opportunity for argument at the  
19 close of evidence at the end of trial.

20 Mr. Villa, you may proceed.

21 MR. VILLA: And Terysa will tell you that she had to  
22 get out of the way and stand up against the wall to avoid  
23 Lieutenant Smith. That was the atmosphere in December of 2009.

24 She found in her box a blank transfer request form.  
25 She doesn't know who put it there. But that transfer request

1 form was of course to transfer out of the ROP unit. And  
2 because she was not feeling safe, because she was feeling  
3 scared, she got in communication with Elizabeth Paiz, who was  
4 the Deputy Chief at the time. As a matter of fact, I think the  
5 testimony will show that Deputy Chief Paiz reached out to  
6 Terysa. And because she didn't feel safe at work, Terysa was  
7 transferred to Burglary, which is a different unit, and it's a  
8 unit that's not as prestigious as ROP and a unit in which there  
9 wasn't as much overtime available.

10 And throughout the time she was transferred to  
11 Burglary, this is from about December 2009 through  
12 approximately the end of 2012, it's a total period you'll hear  
13 of about 18 months, she was hopeful that the situation at ROP  
14 was going to get addressed and she would be able to come back,  
15 but that didn't happen. Lieutenant Smith was allowed to stay  
16 there until the summer of 2010 when he retired. Sergeant  
17 Hubbard stayed there longer than that, and Kevin Gagne was also  
18 still there.

19 And Burglary is not in the Special Investigations  
20 Division. The Special Investigations Division is part of a  
21 separate unit, and, of course, Commander Hudson was still the  
22 Commander of the Special Investigations Division for a period  
23 of time, as well. So there's a long back and forth when  
24 Terysa's trying to get back into ROP but doesn't feel safe  
25 because nothing's being addressed to get -- with the situation

1 she has. She doesn't want to go back without any changes being  
2 made. And throughout the time she spent in Burglary, she lost  
3 out on about \$27,000 worth of overtime compared to the overtime  
4 that she made while she was in the ROP unit.

5 Now, I want to talk to you about October of 2010.  
6 She's in Burglary at the time. This is when this -- she's in  
7 sort of this Purgatory position, and she happens to go to  
8 Walgreen's. Now, as I told you, when ROP detectives -- And she  
9 was still using her same vehicle that she had as a ROP  
10 detective. They don't wear uniforms. They have undercover  
11 vehicles. They're in their vehicles almost all the time  
12 because they've got to be ready to respond to a call.

13 Terysa Welch was on her way to her house, she stopped  
14 at a Walgreen's, bought a 12-pack of beer, and it just so  
15 happened that Kevin Gagne was at that Walgreen's and saw her  
16 buy this 12-pack of beer and saw her go then to her ROP  
17 vehicle, and so he called his new Lieutenant at the time --  
18 this was Lieutenant Roseman, who took over for Lieutenant  
19 Smith -- and said what he just saw, that he saw Terysa  
20 transporting this alcohol in her car. Well, that's a violation  
21 of policy. Officers aren't supposed to do that. You're not  
22 supposed to transport alcohol in a City vehicle.

23 And if you look at the policies for that violation,  
24 there's different disciplinary ranges. It goes 7 to 1. 7's  
25 the least serious. 1 is the most severe. This is a 6. And



1 what a 6 calls for is a written reprimand. And you'll hear  
2 that there's testimony that that can be handled by the person's  
3 most direct supervisor, so in that case the Sergeant or maybe  
4 the Lieutenant can write a written reprimand and say, you know,  
5 you violated policy, don't do it again. That's not what  
6 happened with Terysa.

7 What happened with Terysa was the Lieutenant who got  
8 the information about this alcohol violation then asked that an  
9 Internal Affairs investigation be opened. And this Lieutenant  
10 of course knew about Terysa's circumstance, knew that she was  
11 trying to get back into SID, back into ROP, and none other than  
12 Lieutenant Doug West had become the Commander of SID.

13 Now, Lieutenant West was the one that Terysa  
14 originally took her Complaint to in Internal Affairs and he  
15 promised her that it would stay confidential, and it didn't.  
16 And Lieutenant West was also intimately involved in the EEOC  
17 investigation and impacted whether he conducted an appropriate  
18 investigation of Terysa's claims.

19 And so now he had become Commander. He was  
20 overseeing SID. And after Terysa went through three different  
21 Internal Affairs interviews, not given a written reprimand,  
22 three Internal Affairs interviews, Mr. West, Doug West,  
23 recommended her termination. He didn't recommend a written  
24 reprimand. He recommended her termination. And of course he  
25 knew all about Terysa's circumstances and the Complaint that

1 she had filed with the EEOC. And it then got reviewed.

2 And let me just back up a minute. What you'll hear  
3 from the City is that, well, the reason that we recommended  
4 termination and ultimately a more severe -- a less severe  
5 sanction than that, but more severe than a written reprimand is  
6 that Terysa was not honest in her Internal Affairs interviews.  
7 What Terysa had said in her Internal Affairs was that she  
8 didn't remember the day. The Walgreen's is right by her house  
9 in Rio Rancho. When she was confronted about it, it was almost  
10 three weeks later. And she didn't deny that she went to the  
11 that Walgreen's, she didn't deny that she would buy alcohol in  
12 her City vehicle. She just couldn't remember that specific  
13 day.

14 And of course there was -- there was a video that APD  
15 went out and got, receipts that they got that showed Terysa was  
16 there. She didn't deny that she was there. She just didn't  
17 remember which vehicle she was in. And so that was the basis  
18 for Lieutenant West's recommendation to terminate her.

19 Well, then it was reviewed by Deputy Chief Paiz --  
20 excuse me -- Deputy Chief Feist, who had taken over for Deputy  
21 Chief Paiz and was also dealing with the issue of whether  
22 Terysa should be put back into ROP or stay in Burglary. He  
23 reviewed it and decided he wasn't going to sustain any findings  
24 that Terysa had not been honest, but he did sustain the  
25 findings that she had transported alcohol in her vehicle and

1 recommended not a termination, but an 80-hour suspension.  
2 Again, Agent Feist answered to Chief Schultz, knew about  
3 Terysa's situation and the EEOC Complaint that she filed.

4 Well, the next step up after Deputy Chief Feist is  
5 Chief Schultz. And Chief Schultz looked at what Deputy Chief  
6 Feist did and said, "I'll agree, we'll sustain for transporting  
7 alcohol in the vehicle," and he imposed 40 hours' suspension,  
8 which was the final suspension, but made her only serve 16  
9 hours.

10 And what you'll hear, ladies and gentlemen, is you'll  
11 hear from witnesses that did the same thing, transported  
12 alcohol in the vehicle and got verbal counseling. But Terysa  
13 ultimately gets this suspension from Chief Schultz, who knew  
14 about her EEOC Complaint.

15 And then what Chief Schultz did was have Terysa's  
16 findings in the Internal Affairs sent to the Law Enforcement  
17 Academy. And the Law Enforcement Academy carries all the  
18 officers' certifications. And so if you don't have a  
19 certification, you can't be a law enforcement officer.

20 They sent that to the Law Enforcement Academy along  
21 with a list of other APD officers who have been accused of much  
22 more serious things, and that was published in the Albuquerque  
23 Journal, in the newspaper. So you can go online and see Terysa  
24 Welch's name along with many other individuals accused of much  
25 more serious charges.

1           And so that, ladies and gentlemen, forms the basis  
2           for Ms. Welch's claims for sexual harassment, discrimination,  
3           and retaliation. And she's going to ask at the end of the  
4           trial that you award -- you find that those three things  
5           happened and that you award her damages for those overtime  
6           hours that she missed, the emotional distress she suffered  
7           during this period of time, loss of enjoyment of life, and  
8           damage to her reputation.

9           But, ladies and gentlemen, although she's going to  
10          ask you for that, I want you to understand that this case is  
11          not about her being a victim. It's about her being a survivor  
12          because now she's a Lieutenant at APD. She didn't let them  
13          terminate her. She ultimately promoted to Sergeant and later  
14          to Lieutenant, and that will tell you something a little bit  
15          about her character. And at the end of this trial we'll ask  
16          that you find in favor of the plaintiff.

17          THE COURT: Mr. Villa, you put an exhibit on the  
18          ELMO. And remind me which exhibit was that.

19          MR. VILLA: 166.

20          THE COURT: And then during the course of your  
21          statement you displayed another exhibit. Was that also 166?

22          MR. VILLA: Yes.

23          THE COURT: All right. Thank you.

24          Folks, I have afforded each side equal time for an  
25          opening statement. Ms. Williams. Ms. Wiggins.

1 MS. WIGGINS: Thank you, Your Honor. May it please  
2 the Court?

3 THE COURT: Counsel.

4 MS. WIGGINS: Members of the jury. Your Honor, and  
5 counsel. Good morning.

6 As you know, Ms. Williams and I have the privilege of  
7 representing the City of Albuquerque and its former Chief of  
8 Police Chief Raymond Schultz. The City and Chief Schultz agree  
9 that it's not right to base decisions on an officer's sex, it's  
10 not right to harass someone on account of their sex, and it's  
11 not right to retaliate against an officer who comes forward  
12 with complaints. But that's not what happened here. The  
13 evidence will show that Lieutenant Welch was treated legally  
14 and fairly during her assignment to ROP. She was never the  
15 subject of any negative evaluation. She was never demoted.  
16 Her pay was never decreased. Her duties as a detective were  
17 never stripped from her, and she was never pushed out of the  
18 police force.

19 There have, however, been changes to Lieutenant  
20 Welch's rank, and those changes are the result of the City  
21 promoting her. First to the position of Sergeant, and then to  
22 the position of Lieutenant. And there have been changes to her  
23 pay, as well, and those changes are the result of her receiving  
24 wage increases, pay raises.

25 You'll hear during this trial directly from the

1 members of the Repeat Offenders Project, what we call ROP, they  
2 work in a very high-stress profession. They are undercover  
3 cops, after all. As you heard, they wear plain clothes; they  
4 do not drive marked vehicles. ROP is considered a specialized  
5 unit. Its mission is to hold high-rate or repeat offenders  
6 accountable for their criminal behavior. They are considered  
7 by all accounts some of Albuquerque's worst of the worst career  
8 criminals.

9           You'll also hear about Lieutenant Welch's employment,  
10 her job history, and her assignments during her career. You'll  
11 hear from her initial supervisor, Lieutenant Rob Smith, that he  
12 worked with her before her assignment to ROP and that he very  
13 much wanted Lieutenant Welch in ROP. She was a detective  
14 investigator, and he felt she would be an asset in ROP.

15           Now, at the time there was opposing philosophy. Some  
16 felt that ROP needed tactically trained Special Weapons and  
17 Tactics officers, or SWAT officers, officers trained in SWAT.  
18 Not investigators. And others thought, no, we need  
19 investigators. Lieutenant Smith felt that detective  
20 investigators who were tactically sound were the ideal choice.  
21 And he selected Lieutenant Welch and Detective Mike Hill  
22 because they both have strong investigative skills, and he made  
23 clear to the other officers in ROP that they had earned their  
24 spots in the unit.

25           Now, you'll hear that sometimes in a high-stress

1 environment such as ROP, officers occasionally joke around.  
2 There's no question. And you saw one example of Lieutenant  
3 Smith's joking around. His congratulatory language to  
4 Lieutenant Welch on her fitness exam results was he wanted to  
5 have children with her. As you saw, that was written next to  
6 the words "You Rock."

7 Lieutenant Smith also joked about his chain of  
8 command. You'll hear that officers who were senior to his rank  
9 he'd sometimes refer to as Daddy, and officers junior to his  
10 rank he'd refer to himself as Daddy. He was, in fact, the  
11 class clown, and he joked with everyone.

12 You'll also hear testimony that these jokes would not  
13 detrimentally affect a reasonable person in Lieutenant Welch's  
14 position. You will also hear that Lieutenant Welch never told  
15 Lieutenant Smith not to joke with her. She never told him she  
16 was offended by his jokes or by any of the other jokes that  
17 were told in her presence.

18 In fact, as Mr. Villa has acknowledged, you will hear  
19 testimony that Lieutenant Welch told Lieutenant Smith that she  
20 got him in her next life. She also told Lieutenant Smith he  
21 was hot, and she told him that they were going to have  
22 great-looking children together.

23 You will hear from Lieutenant Welch's coworkers and  
24 supervisors about the environment in ROP, and as newcomers how  
25 she and Detective Mike Hill were treated. And the testimony

1 will be they were treated alike. And at first those who  
2 disagreed with their selection into ROP, those who wanted the  
3 SWAT-trained officers were not particularly welcoming. You'll  
4 also hear about personality conflicts in ROP, and you'll hear  
5 testimony that Lieutenant Welch's sex, her gender, played no  
6 role in the environment in ROP or in any of the other incidents  
7 that she testifies to.

8 Now, you'll hear that in July of 2009 Lieutenant  
9 Welch and other detectives of ROP were scheduled to attend a  
10 mandatory training at the shooting range, but she and officer  
11 Mike Hill never showed up for the training. Lieutenant Welch  
12 never contacted her immediate supervisor, Sergeant Hubbard, to  
13 say that she wouldn't be there. You'll hear testimony that  
14 Sergeant Hubbard issued her a memo, which we've called the  
15 punctuality memo, and instructed her to contact him in the  
16 future if she wasn't going to be at a training. It was a  
17 reminder. It was not discipline.

18 You'll also hear that Lieutenant Welch became irate  
19 and started yelling when she was handed the punctuality memo.  
20 Lieutenant Welch complained that Detective Mike Hill should  
21 also have gotten a punctuality memo since he didn't attend that  
22 training either, but you will hear from Detective Hill that he,  
23 unlike Lieutenant Welch, had called Sergeant Hubbard that  
24 morning to say that he was going to participate in a foot chase  
25 that was ongoing. You'll also hear that he called after and



1 asked if he should still report to the shooting range for  
2 training or whether it was too late because the training was  
3 almost over. That's why Detective Hill did not get a  
4 punctuality memo. It wasn't because he was male.

5 It was after Lieutenant Welch got the punctuality  
6 memo that she complained about harassment and discrimination in  
7 ROP. The evidence will show that in August of 2009 after her  
8 punctuality memo Lieutenant Welch claimed for the first time  
9 that she had been subject to sexual harassment since 2004,  
10 harassment that she took five years to report.

11 And she filed a Complaint with the federal agency  
12 known as the Equal Employment Opportunity Commission, or the  
13 EEOC. After that she and her lawyer took her Complaint to  
14 Lieutenant Doug West in Internal Affairs. You'll hear she  
15 cited several examples of what she said was sexual harassment  
16 and disparate or different treatment on account of her gender.  
17 One example was the punctuality memo. Another example was the  
18 joking around in ROP.

19 She also reported that Sergeant Hubbard and  
20 Lieutenant Smith failed to follow some of the rules or the  
21 operating procedures to the letter. And then another example  
22 was what she said happened when the man she was engaged to  
23 marry was arrested for rape. And she will tell you that she  
24 was engaged to Officer David Maes in 2007, and that while they  
25 were living together he was, as you heard from Mr. Villa,

1 arrested for sexually assaulting a woman he had in his custody.

2 Lieutenant Welch complained that she was never told  
3 that Officer Maes was under investigation. You'll hear  
4 testimony that detectives do not inform a suspect's wife,  
5 husband, girlfriend, boyfriend, or fiancée if their significant  
6 other is under investigation, because you'll hear that to do so  
7 could seriously compromise an investigation.

8 You'll also hear that on the day that Officer Maes  
9 was arrested, it was Lieutenant Smith's duty to tell her of the  
10 news.

11 He asked her to go outside so they would have some  
12 privacy, and he told her about the arrest. You'll hear that he  
13 tried to console Lieutenant Welch. He put his arm around her,  
14 and at another point he held her hand. She wanted to go home,  
15 understandably so. He offered to take her there so she could  
16 retrieve her belongings and her animals.

17 Lieutenant Welch said this was harassing. You'll  
18 hear testimony, however, that Lieutenant Smith never touched  
19 Lieutenant Welch at this time or at any other time in a sexual  
20 fashion. And you'll hear that a reasonable person would not  
21 consider his efforts to console her sexual in nature.

22 After Lieutenant Welch came forward with her  
23 Complaint, you will hear that the City removed both subject  
24 Hubbard and Lieutenant Smith from ROP and that Lieutenant Doug  
25 West of APD's Internal Affairs conducted an investigation. He

1 conducted an internal investigation. Lieutenant West was a  
2 veteran officer. He had a great deal of experience. He knew  
3 how to conduct an investigation. He will testify that he  
4 listened to Lieutenant Welch, he met with her and her lawyer.  
5 He took the 16-page Complaint that she had written and studied  
6 it. He determined which witnesses should be interviewed, and  
7 he interviewed eight to nine witnesses. And after that he  
8 prepared a report of his investigation.

9           The City did not find sufficient evidence to sustain  
10 a finding that Lieutenant Welch was treated differently on  
11 account of her sex or was the victim of harassment. The City  
12 did, however, substantiate Lieutenant Welch's allegations that  
13 Sergeant Hubbard and Smith violated the rules pertaining to  
14 signing Criminal Complaints in person and reporting vehicle  
15 accidents no matter how minor. And you will hear that the City  
16 disciplined both Sergeant Hubbard and Sergeant Smith because of  
17 the matters that Lieutenant Welch raised.

18           You'll hear that as another remedial measure the City  
19 required every member of Lieutenant Welch's division at APD to  
20 attend another training session -- session, rather, on  
21 retaliation, harassment, and discrimination. The City held  
22 three separate trainings and required, said it was mandatory  
23 for every officer to attend. The training was designed to  
24 ensure that everyone knew what behaviors were acceptable, what  
25 behaviors were not acceptable, and everyone understood what the

1 expectations in the law was.

2 Lieutenant Welch claimed the training was punitive  
3 and retaliatory. You'll also hear at about the same time  
4 Lieutenant Welch sought an assignment outside of ROP and she  
5 did so from Deputy Chief Beth Paiz. When employees transfer to  
6 a different position, typically there needs to be an opening  
7 that they can transfer into. You will hear that in this  
8 situation Lieutenant Welch was permitted to go into Burglary  
9 even though there was no opening in Burglary at the time.  
10 You'll also hear that she was asked several times if she wanted  
11 to go back to ROP, an offer that she declined each time even  
12 after there had been a change of command and Sergeant Hubbard  
13 and Lieutenant Smith were no longer in ROP.

14 You'll hear testimony from Lieutenant Welch that she  
15 was upset that someone packed up her belongings while she was  
16 tasked to Burglary and that when she returned them, some items  
17 that did not belong to her were among the items returned. For  
18 example, in a bin that did not have her name on it, unlike the  
19 boxes of her personal belongings that was returned at the same  
20 time, Lieutenant Welch found a photograph of herself waiving to  
21 the camera. That was on top of her belongings. She felt that  
22 that was a message to her. She also reported that she found an  
23 item in the bin, not in the boxes with her name, but in a bin  
24 that was tied in a knot and in a fashion that she felt looked  
25 like a noose. You will hear that a noose, in fact, at the time

1 was the logo for ROP, and that people will testify that the  
2 reason this symbol was selected for ROP was because of, number  
3 one, a noose is made out of a rope, and, number two, if you  
4 give offenders enough rope, they will hang themselves.

5 Lieutenant Welch will also say that she was treated  
6 differently than male officers because of the way the incident  
7 involving her purchase of alcohol was handled. And as you  
8 heard, Detective Gagne was the Detective who witnessed the  
9 purchase of alcohol at the Walgreen's. You'll hear that unlike  
10 other officers who were accused of the same thing, during the  
11 Internal Affairs investigation that was handled by a man named  
12 Cecil Knox, Lieutenant Welch was evasive, she was  
13 uncooperative, and it was for these reasons that she was  
14 appropriately disciplined more severely than the other officers  
15 who've readily admitted their mistake.

16 Lieutenant Welch says she can't be subject to  
17 discipline after she came forward with her harassment  
18 allegations without it being retaliation. The City disagrees.  
19 The City believes that she can.

20 That's the evidence that we expect that you will hear  
21 about Lieutenant Welch's claims against the City. But as you  
22 know, Lieutenant Welch has also brought claims against Chief  
23 Schultz. And as Ms. Williams noted, Chief Schultz is employed  
24 elsewhere, and so his time with us in the courtroom will be  
25 somewhat limited, but you will hear that Lieutenant Welch's

1 claim arises from her 2011 application to participate in what's  
2 called the promotional process at the City. That was a  
3 promotional process for the rank of Sergeant. An officer at  
4 APD must successfully complete the promotional process to be  
5 considered for a promotion. And the first part of the test is  
6 a written exam, and then it is followed by an assessment of  
7 skills.

8 To be eligible to participate in the promotional  
9 process, an officer can't have been subject to discipline  
10 within the prior 12 months, and because of the alcohol in the  
11 City vehicle issue, technically under the rules Lieutenant  
12 Welch wasn't eligible to test for Sergeant, and so she was  
13 told, if you want an exception made for you, you need to  
14 communicate the reasons why you should be an exception to the  
15 rule to Chief Schultz. And so she did that. She wrote a memo,  
16 and Chief Schultz said, "That's fine, you may test, you may  
17 participate in the promotional process."

18 You will hear that after he decided she could  
19 participate in the process Chief Schultz had nothing further to  
20 do with the promotional process. His involvement had ended.

21 You'll also hear that Chief Schultz did report APD  
22 officers who had been subject to a certain level of discipline  
23 to the New Mexico Law Enforcement Academy. Those were officers  
24 who had more than 40 hours in discipline, just like Lieutenant  
25 Welch. And in March of 2011, Lieutenant Welch's discipline was

1 reported to the Law Enforcement Academy. Her name was reported  
2 along with 31 other officers. And those were 31 other officers  
3 from APD. Many other officers from around the state of  
4 New Mexico were also reported. This report had simply nothing  
5 to do with Lieutenant Welch's gender or her earlier complaints  
6 of harassment or discrimination.

7 I mentioned earlier that you would hear about  
8 personality conflicts, and you will. You will hear that  
9 Lieutenant Welch never liked Detective Gagne, and the feeling  
10 was mutual. She did not like Detective J.R. Potter because he  
11 was, frankly, fat. She was not happy with Detective Hill  
12 because of his relationship with her sister-in-law, and she did  
13 not like Sergeant Hubbard or Lieutenant Smith because they  
14 didn't follow the rules to the letter as she expected.

15 And as you're hearing the evidence, we ask that you  
16 think about and focus on whether Lieutenant Welch's sex had  
17 anything to do with the personality conflicts in her unit or  
18 her work environment, whether it had anything to do with the  
19 decisions that were made regarding her assignments to Burglary  
20 and ROP, and whether she was retaliated against for making any  
21 complaints.

22 After you hear the evidence, your job will be to  
23 determine whether the City decided, among other things, to hold  
24 three sexual harassment refresher trainings, requiring 70  
25 employees and officers to attend as a means of punishing or

1 retaliating against Lieutenant Welch. You'll be asked to  
2 decide whether her gender or her sex played any role in any of  
3 the other instances she complains about. And we are confident  
4 that you will conclude, as did the City, that Lieutenant Welch  
5 was not a victim of harassment, discrimination, or retaliation  
6 by either the City or Chief Schultz.

7 Thank you.

8 THE COURT: All right. Thank you, Ms. Wiggins.

9 Ladies and gentlemen, it is just about 10:37 or so,  
10 according to our clock on the wall. You arrived about 8:15,  
11 8:30. Let me just ask you before we start our evidence, any  
12 members of the jury, would you like to take a break at this  
13 time for about ten minutes?

14 Yes. I see some hands going up. So we'll do exactly  
15 that. We'll be in recess, and then please be back ready to  
16 line up within about ten, ten minute's time.

17 All right. We'll be in recess. Please rise for the  
18 jury.

19 (Jury out at 10:37 a.m.)

20 THE COURT: All right. Counsel, is there anything to  
21 take up at this time?

22 MR. VILLA: No, Your Honor.

23 THE COURT: Your first witness will be, Mr. Villa?

24 MR. VILLA: Ms. Welch.

25 THE COURT: Okay. If you can have Ms. Welch in the



1 witness stand and we'll convene and begin at that time.

2 MR. VILLA: Yes, Your Honor.

3 THE COURT: Okay. Thank you.

4 (Court stood in recess at 10:38 a.m. and resumed at  
5 10:49 a.m. as follows:)

6 THE COURT: Please rise for the jury.

7 (Jury in at 10:49 a.m.)

8 THE COURT: All right. Please be seated.

9 Ms. Welch, please remain standing. Raise your hand  
10 to be sworn.

11 (Plaintiff sworn.)

12 MS. HALL: If you don't mind stating your name, and  
13 spell your first and last name.

14 THE WITNESS: Yes, ma'am. Terysa Welch.  
15 T-E-R-Y-S-A, and the last name is W-E-L-C-H.

16 PLAINTIFF'S WITNESS TERYSA WELCH,  
17 after having been first duly sworn under oath,  
18 was questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. VILLA:

21 Q. Good morning, Ms. Welch.

22 A. Good morning.

23 Q. Can you tell the jury how you're currently employed?

24 A. I'm currently employed as a Lieutenant with the  
25 Albuquerque Police Department.

1 Q. When did you become a Lieutenant?

2 A. At the end of August of 2017.

3 Q. Are you married?

4 A. I am.

5 Q. What's your husband's name?

6 A. Jason Bowie.

7 Q. Do you have any children?

8 A. I have a stepson, 11 years old.

9 THE COURT: Mr. Villa, just -- I apologize to  
10 interrupt, but just so you have a sense, and you'll have plenty  
11 of time to conduct your examination, can you give me an  
12 estimate of how long the direct will take?

13 MR. VILLA: At least a couple of hours, Your Honor.  
14 Maybe three.

15 THE COURT: Okay. I just needed a rough timeline.  
16 Please proceed.

17 MR. VILLA: Yes, Your Honor.

18 Q. (By Mr. Villa) Where do you live with your husband?

19 A. In Rio Rancho.

20 Q. Now, let me ask you this. Can you tell the jury just  
21 briefly, where were you born and raised?

22 A. I was born and raised in Montana.

23 Q. Do you have any siblings?

24 A. I do. I have three siblings, older twin sisters and a  
25 younger brother.

1 Q. Do you have any family in law enforcement?

2 A. I do. My baby brother's a law enforcement officer here  
3 with APD.

4 Q. And what about your grandfather?

5 A. My grandfather was a Chief of Police in a little town  
6 called Libby, Montana.

7 Q. When did you become a police officer?

8 A. In 1997 I joined the APD Academy.

9 Q. Why did you join the Academy?

10 A. Oh, I wanted to be a police officer since I was a little  
11 girl.

12 Q. How come?

13 A. I looked up to my grandfather, who I called Papa, and he  
14 was a big influence in my life, and I respected him and wanted  
15 to be like him.

16 Q. Now, you grew up in Montana. Did you go to high school  
17 there?

18 A. I did.

19 Q. What year did you graduate?

20 A. In 1992.

21 Q. Did you go to college after that?

22 A. I did. Also in Montana in a town called Missoula,  
23 Montana.

24 Q. What did you study?

25 A. I received my degree in sociology. I had a minor in

1 psychology and an emphasis in criminology.

2 Q. Now, you testified that you started the Academy in 1997.

3 A. Correct.

4 Q. Do you remember what class that was?

5 A. 78th.

6 Q. What year did you graduate the Academy?

7 A. '98.

8 Q. And of your Academy class, how many women were in that  
9 class?

10 A. We started with seven and ended up with three.

11 Q. Now, we know at some point in time in 2004 you joined the  
12 ROP unit. Right?

13 A. Correct.

14 Q. Or I guess ROP. Was there anything that took place in the  
15 Academy that led you to end up in ROP?

16 A. Yes.

17 Q. Tell the jury about that.

18 A. So when you're a cadet in the Academy, you have multiple  
19 units come in and do a presentation for you, and when the ROP  
20 unit came in, I was a bright-eyed cadet, and they put a  
21 presentation on, and there was some video involved, and I just  
22 thought those guys were the coolest unit, and it was that day  
23 that I set my sights on the ROP unit, and I knew that, man, I  
24 had -- that was my spot, I had to be in that unit, that was --  
25 I was born to be in that unit. And I think the reason was

1 because I knew I wanted to be an investigator, and I knew I  
2 loved the tactical side, and I got sort of the best of both  
3 worlds in that unit, and I -- so from that day on everything  
4 that I did was to try to get to that unit. And I took every  
5 training opportunity I could. I think I counted 29 extra  
6 training classes that I didn't have to take to try to help  
7 myself get prepared to be in that unit.

8 Q. Let me stop you there for a minute. Why can't you just go  
9 from the Academy to the ROP unit?

10 A. Oh, because it's a highly coveted -- you know, some people  
11 never make it to the ROP unit. You know, there's only a few  
12 select spots, and a lot of people compete for those spots. I  
13 think there's only been two women ever on the ROP team in the  
14 history of the ROP team. Ever.

15 Q. And can a rookie police officer, if you will, who's coming  
16 right out of the Academy go to a detective unit?

17 A. No.

18 Q. Why not?

19 A. Well, because you need experience to be a detective. You  
20 need to know how to do interviews. You need to know how to  
21 write search warrants and arrest warrants. You don't want just  
22 a rookie being a detective. You know, those are felony cases  
23 and it requires experience. You start out -- You climb the  
24 ladder. You start out as a patrolman first, and you get  
25 experience with misdemeanors and car stops and how to do the

1 basics first. And then that's something you progress into.

2 Q. When you graduated in 1998, what was your first  
3 assignment?

4 A. You go into OJT, and then my first assignment was just a  
5 patrol officer in Valley day shift.

6 Q. OJT is on-the-job training?

7 A. Correct.

8 Q. When you say Valley day shift, is the City divided up  
9 regionally by names that are associated with that region?

10 A. Correct. There are six area commands. The city is broken  
11 up into those area commands. Each area command would have a  
12 Commander and its own chain of command and its own set of  
13 patrol officers taking calls for service as the citizens need  
14 help.

15 Q. And I think you testified that that would have occurred in  
16 1998.

17 A. Yes.

18 Q. At what point in time -- Well, was there a point in time  
19 that you became a detective?

20 A. There was.

21 Q. When did that happen?

22 A. It was around 2001.

23 Q. And what sort of detective did you become?

24 A. I became a Northeast Impact detective. It's a general --  
25 generalist detective where you -- at the time, all felony

1 crimes within the Northeast Area Command would be investigated  
2 by a Northeast Impact detective.

3 Q. Now, again, I think you explained this, but why not just  
4 go from patrol, skip over Impact, and go right to ROP?

5 A. They would have never taken me.

6 Q. Why not?

7 A. I wouldn't have the proper experience.

8 Q. So the Northeast Impact would have been your first  
9 assignment as a detective?

10 A. Correct.

11 Q. How is being a detective different than being a patrolman?

12 A. Well, you would write search warrants. You would  
13 investigate in-depth felony crimes. You would do interviews.  
14 You would -- You know, the patrolman does more of the immediate  
15 calls for service; whereas the detective follows up on those  
16 calls for service if that is necessary.

17 Q. When you were a detective in Northeast Impact, did you  
18 meet Robert Smith?

19 A. I did.

20 Q. How did you meet him?

21 A. He was the Sergeant of that unit?

22 Q. The same Sergeant that was ultimately your first Sergeant  
23 in ROP?

24 A. Correct.

25 Q. Did you have any problems with Sergeant Smith while you

1 were at the Northeast Impact?

2 A. No, I did not.

3 Q. Any issues with sexual harassment?

4 A. No.

5 Q. What was your assignment after the Northeast Impact?

6 A. I applied for a position in Special Investigations  
7 Division, and the unit was called the Crisis Intervention Team.

8 Q. Let me stop you there. What is the Special Investigations  
9 Division?

10 A. It's a division all its own, and it comprises -- at that  
11 time, it comprised of the Crisis Intervention Team, which  
12 specializes in mental health issues, and then also included in  
13 Special Investigations would be Gangs, Narcotics, Intel unit,  
14 Vice. I'm missing one. I might be missing one unit in there,  
15 but those are all included in Special Investigations Division.

16 Q. And ROP is, as well?

17 A. ROP, yes.

18 Q. So what was it about CIT, or Crisis Intervention, that  
19 made you want to go there?

20 A. To be honest with you, it was my way into the division so  
21 that I could get into ROP.

22 Q. When you say "into the division," you mean the Special  
23 Investigations Division?

24 A. Correct.

25 Q. Why did you want to get into the Special Investigations



1 Division?

2 A. Because once you've got your foot into the door of Special  
3 Investigations, which was difficult to even get into the  
4 division, then it was easier to transfer within the division to  
5 ROP, and so I took that position. Not that I wasn't interested  
6 in Crisis Intervention Team, but my ultimate goal, as I stated  
7 before, was to get into the ROP unit.

8 Q. Now, I take it, then, that the division that you were in  
9 for Northeast Impact is not the Special Investigations  
10 Division.

11 A. No, it is not.

12 Q. What is the umbrella, I guess, that's over the Northeast  
13 Impact?

14 A. That is under Field Services.

15 Q. Okay. So Field Services, that would encompass patrol and  
16 some detective positions?

17 A. Correct.

18 Q. But not the detective positions for SID?

19 A. No.

20 Q. Okay. Are there any other divisions, if you will, within  
21 the Albuquerque Police Department? You talked about Field  
22 Services and Special Investigations Division. What else is  
23 there?

24 A. Sure. There's Tactical, there's Criminal Investigations,  
25 which is going to include things like, you know, you have

1 Robbery, you have Property Crimes. There's -- It kind of --  
2 Things can shuffle around depending on the Chief, and it's  
3 changed probably, you know, five or six times since Chief  
4 Schultz left, so it often gets reorganized under different  
5 mayors and different administrations.

6 Q. So referring to a specific unit, the Northeast Impact or  
7 CIT, who is in charge of those units?

8 A. Well, there's a Commander in charge, or it was a Captain  
9 back then. Now they call them Commanders. There's a  
10 Lieutenant, and then there's a Sergeant, and then you have  
11 either the detectives or the officer below that.

12 Q. So, for instance, Northeast Impact, who's the direct  
13 supervisor for the detectives in Northeast Impact?

14 A. The Sergeant, and that would have been Rob Smith at the  
15 time.

16 Q. And the Sergeant's supervisor is the Lieutenant?

17 A. Correct.

18 Q. And the Lieutenant, does that Lieutenant have more duties  
19 than just overseeing the Northeast Impact?

20 A. Yes.

21 Q. So give the jury an idea, what other duties would a  
22 Lieutenant have in that position?

23 A. For Field Services Lieutenant, we have a number of teams  
24 that would be uniformed officers and Sergeants running those  
25 uniformed teams. It's pretty extensive.

1 THE COURT: Mr. Villa, let me just ask, is everybody  
2 on the jury able to hear the witness as well as counsel?

3 Yes. Okay.

4 Mr. Villa.

5 MR. VILLA: Thank you, Your Honor.

6 Q. (By Mr. Villa) Now talking about, say, Crisis  
7 Intervention Team, is the Crisis Intervention Team serviced by  
8 a Sergeant?

9 A. Yes, it is.

10 Q. And above the Sergeant is Lieutenant?

11 A. Correct.

12 Q. So now we're in SID. What would the Lieutenant's role be  
13 in SID? Is it just over the Crisis Intervention Team or other  
14 teams?

15 A. No. The Lieutenant of SID is over the entire division of  
16 all of SID.

17 Q. So they have more duties than just dealing with one  
18 specific unit or team?

19 A. Correct.

20 Q. Is that true throughout the Department structure?

21 MS. WILLIAMS: Objection, Your Honor. This line of  
22 questioning is leading. And it's not background.

23 THE COURT: I recognize, but it's somewhat  
24 foundational, so see if you can restructure your questions, but  
25 I'll be flexible on this. It is foundational.

1 Q. (By Mr. Villa) Let me ask this question. When you were  
2 in CIT and later ROP, was there a Sergeant over each of the  
3 units within the SID?

4 A. That's correct. There's a Sergeant over Vice, there's a  
5 Sergeant over ROP, there's a Sergeant over Narcotics, there's a  
6 Sergeant over Intel, there's a Sergeant over each specific team  
7 within SID, and then there's one Lieutenant over each of all  
8 the teams and one Captain over the entire division.

9 Q. Now, you testified a little while ago that it was hard to  
10 get your foot in the door in SID, at least at the time you did.  
11 Why is that or why was that?

12 A. Because they're very competitive spots and there's a lot  
13 of people that want them.

14 Q. Now, once you were in CIT, what was the next assignment  
15 you had after that?

16 A. Well, after I went to ROP.

17 Q. Do you remember when you got into ROP?

18 A. In July of 2004.

19 Q. Before July of 2004, had you tried to apply to ROP?

20 A. Yes, I did.

21 Q. How many times?

22 A. Two -- At least two previous times, I tried to get into  
23 ROP.

24 Q. And when you ultimately got in, do you remember how many  
25 applicants were attempting to get into the position?

1 A. There was approximately 15.

2 Q. What was the application process or testing you had to do?

3 A. It was a two-day process. We did a physical fitness test,  
4 which was the normal department physical fitness test, which I  
5 believe at the time -- I don't remember if it was push-ups or a  
6 bench press, it was one or the other, and there was sit-ups, a  
7 one-and-a-half mile run, and I believe a leg press, and then a  
8 flexibility test also.

9 Q. Did you have to do any sort of physical fitness test to  
10 get into either Northeast Impact or the CIT?

11 A. No.

12 Q. And other than -- What was the other testing process for  
13 ROP?

14 A. There was a written test, an oral interview, and then  
15 there was a series of six different shooting tests that we had  
16 to perform in front of the ROP team.

17 Q. Were the other -- the Northeast Impact or CIT, did you  
18 have to do shooting tests?

19 A. No.

20 Q. What about written tests or oral interview?

21 A. I don't recall one.

22 Q. Were there other women applying to the ROP unit at the  
23 time you applied and got in?

24 A. No, there was not.

25 Q. And when you got in, did you get in with any other

1 applicants?

2 A. I did. There was two positions available, and myself and  
3 Detective Mike Hill both achieved the spots.

4 Q. Now let me ask you this. I'm going to show you  
5 Exhibit 166. Have you seen that exhibit before?

6 A. Yes, I have.

7 Q. Now, can you tell the jury what it is?

8 A. That's the results of one of my Physical Fitness  
9 Assessments.

10 Q. Now, it's dated in May of 2004, May 19th, 2004. Do you  
11 see that right there?

12 A. Yes.

13 Q. Okay. This was actually before you made it into ROP. Is  
14 that right?

15 A. Yes.

16 Q. Was this part of the testing process?

17 A. I'm not sure if this was part of the ROP testing process.  
18 I believe we had to do an additional test the day of, so this  
19 wouldn't have been the testing process.

20 Q. Okay. Now, it has some writing there on the bottom. It  
21 says "I want to have children with you! Very Impressive!  
22 Rob." Do you know who wrote that?

23 A. That would have been Rob Smith.

24 Q. And then it says in red "You Rock!" Do you know who wrote  
25 that?

1 A. I believe Rob Smith.

2 Q. When did you receive this exhibit with the writing on it?

3 A. When I was in ROP.

4 Q. Do you remember the month or the year?

5 A. It was shortly after I achieved my position. It was in my  
6 cubicle at my desk.

7 Q. Now, when you were in ROP, was it required that you do  
8 Physical Fitness Assessments?

9 A. Yes. Once a year.

10 Q. And have you had to do Physical Fitness Assessments prior  
11 to being in ROP?

12 A. You didn't have to. Well, you had to show up. It's a  
13 hard answer. You have to physically show up to what we call  
14 MOE's, mandatory -- It's Maintenance of Effort. It stands for  
15 Maintenance of Effort. MOE. And every police officer has to  
16 have yearly training with the Albuquerque Police Department,  
17 and part of that yearly training includes a physical fitness  
18 test. They can't make you run unless you're in a specialized  
19 unit, and the specialized unit can require you to do things  
20 like a physical fitness test. Not all of them do, but ROP was  
21 one that did require that.

22 Q. So every year before you got into ROP, did you do a  
23 Physical Fitness Assessment?

24 A. I did a Physical Fitness Assessment every year of my  
25 20-year career.

1 Q. Do those Physical Fitness Assessments -- Before you were  
2 promoted -- we'll talk about that later -- to a Sergeant, who  
3 did the Physical Fitness Assessments go to?

4 A. They go to the physical fitness coordinator who's a person  
5 at the Academy.

6 Q. So would your Physical Fitness Assessment have gone to  
7 Sergeant Smith, the one that I'm showing you here?

8 A. I don't know why this one would have, because it was  
9 before I actually took a position in ROP, but he had it for  
10 some reason. I started in ROP in July. After July, I would  
11 have handed them in to my Sergeant, because you get an  
12 incentive. You'll see the bottom of the page, it says  
13 "INCENTIVE 16 hours," so you get 16 hours of comp time, it's  
14 called. You get 16 hours of off time as an incentive of doing  
15 that well on the physical fitness test.

16 Q. Do you know if Sergeant Smith wrote on anybody else's  
17 Physical Fitness Assessment at that time?

18 A. Not to my knowledge.

19 Q. Now, was that the only time that Sergeant Smith ever told  
20 you while you were in ROP that he wanted to have children with  
21 you?

22 A. I had a conversation with Sergeant Smith at the Police  
23 Academy. We were catching up. It had been a little while  
24 since I had seen him. In the interim between Northeast Impact  
25 and my ROP time, and we were working out.



1 Q. Now, at the time were you in the ROP unit?

2 A. Yes.

3 Q. But you were both at the Academy to do a workout or  
4 something?

5 A. Yes.

6 Q. Okay. Go ahead.

7 A. So we were catching up, and I was familiar with his two  
8 sons, and without going into more personal information about  
9 his boys, I was asking him how one of his sons was progressing.  
10 He had been a little behind physically for personal reasons.  
11 And he was talking about how he -- You know, he's a large --  
12 larger-statured man, and he was telling me how he's from Viking  
13 decent, and that's kind of Rob's personality, and he was  
14 telling me how his grandfather was even larger and that his  
15 bloodline is -- is being sort of depleted size-wise, and --

16 I feel a little mean telling this story.

17 Q. That's okay. I understand that it's difficult. But what  
18 did he say to you about having children with you?

19 A. So he -- he was talking about how this -- one of the boys  
20 was smaller than the other boy, and he referred to his wife as  
21 a pygmy, and he was saying how she had bred out the size of his  
22 bloodline and was calling his wife a pygmy, and he had referred  
23 to me as "If I had bred with you, I wouldn't have the same  
24 problem."

25 And it was -- I felt two things. I felt awkward that

1 he made the comment about breeding with me because I hadn't had  
2 that -- I didn't know how to handle the comment. And then I  
3 felt bad for Shannon, his wife, because I knew Shannon. She  
4 was a victim advocate supervisor for us, and she does very  
5 important work for us, and I appreciate the work that she does,  
6 and I've -- you know, been around her and respect her, and I  
7 just know how I would feel as a wife if I knew my husband was  
8 talking about me like that, even in a joking manner. It felt  
9 it was --

10 MS. WILLIAMS: Objection, Your Honor. This is  
11 nonresponsive.

12 THE COURT: Well, I'll overrule it.

13 A. I felt it was disrespectful, and I --

14 Q. (By Mr. Villa) So let me ask you this. Did you say to  
15 him at that point in time that you thought they would have  
16 great-looking children together? That you and Rob?

17 A. Absolutely not.

18 Q. Did you ever say that to him?

19 A. No, I did not.

20 Q. When you got Exhibit 166, the fitness evaluation, did you  
21 tell him that?

22 A. No, I did not.

23 Q. Now, in both these instances he was your Sergeant?

24 A. Yes.

25 Q. Why not go complain right then and there to the

1 administration?

2 A. Because I loved my job.

3 Q. Explain that to me. So if you -- What would happen or  
4 what did you feel would happen if you complained with respect  
5 to your job?

6 A. That I would be removed from my job.

7 Q. Why did you think that?

8 A. Rob is a very well-connected influential person in the  
9 Police Department. His personality is not the kind of  
10 personality that is approachable in that way. He's an  
11 intimidating person both physically and personality-wise. That  
12 is -- As you'll hear in my later testimony, I was not even able  
13 to approach him when I was unhappy with an issue with Sergeant  
14 Hubbard. He was not a person that you could go to with an  
15 issue and he be open-minded about a complaint about the work  
16 environment. What he said goes. And --

17 Q. So let me ask you this. Let's talk some other things.  
18 Did he ever make comments to you about your looks?

19 A. Yes, he did.

20 Q. Tell the jury about that.

21 A. Rob would make a sound to me as he would look me up and  
22 down, and it was an ummm as he would look all the way down my  
23 legs. And to further explain, ROP was a unit that often had to  
24 do surveillance, lengthy surveillance, and we would be out in  
25 the summertime in front of people's residences, and we had to

1 have the trucks turned off. You couldn't be in residential  
2 neighborhoods with vehicles running, with the air conditioner  
3 running. And for that reason we had to dress very lightly, so  
4 our attire would be shorts and a light T-shirt and then our gun  
5 belt. It wasn't a uniform. It was -- It was a plain gun belt,  
6 a gun, handcuffs, flashlight, magazines, and such, and then I  
7 would -- we would throw a shirt on top of that to cover all  
8 that stuff so we would blend in in the community.

9 And when we were on surveillance, we had to turn the  
10 vehicles off. It wasn't about our comfort. We had to -- The  
11 trucks were very dark tinted, and if you had the vehicle  
12 running, people could tell you were in it, so we would put a  
13 sunshade up, and in order to make yourself more comfortable,  
14 you would sweat profusely anyway, but that is what we had to  
15 wear in order to be out on these long surveillances.

16 And so, yes, you showed more of your body as a  
17 result. And he would look me up and down and he would ummmm.  
18 He would say things like "Tight as a drum." He would -- He  
19 would ask me "Have you changed your workouts? It's working."  
20 Comments like that.

21 Q. Now let me stop you there just for a minute. Did you ever  
22 try to approach Sergeant Smith and say, you know, "You need to  
23 stop making these comments," you know, "What you wrote on my  
24 evaluation's not appropriate," anything like that?

25 A. No, I did not.

1 Q. Why not?

2 A. Again, I liked my job. I did things to try to make  
3 people -- have people around me, because he would not do it  
4 when I was -- unless I was alone with him. He wouldn't -- He  
5 wouldn't do this when I had people around. He took the  
6 opportunity when I was alone. I did things -- Like later on  
7 when he was a Lieutenant, his office was right next to one of  
8 the doors. I went completely around and I used a different  
9 door so I just wouldn't have to see him. I took steps like  
10 that, just, look, completely avoid this guy so I don't even  
11 have to -- he just became the creepy guy that I didn't want to  
12 see him. He made my stomach turn.

13 Q. Let me stop you there for a minute. As the Sergeant  
14 before he became the Lieutenant, how often would you interact?

15 A. As the Sergeant, I had to see him every day.

16 Q. And you testified just a minute ago that he would make  
17 these comments or say these things when you were alone.

18 A. Yes.

19 Q. How often did that happen, if you know?

20 A. Every chance that he got that we were -- that I was alone  
21 with him.

22 Q. Did you ever hear him make comments to male detectives in  
23 ROP about their looks?

24 A. No.

25 Q. Did you ever hear him make comments to male detectives

1 about their workouts in respect to their body?

2 A. No.

3 Q. And then as a Lieutenant, you saw him less?

4 A. I did see him less.

5 Q. Why is that?

6 A. He had more responsibilities. There was no daily  
7 interaction. A Sergeant had to go out with us. A Sergeant had  
8 a direct role with us, and so, you know, I didn't have to hear,  
9 you know, the -- you would -- We would generally meet up in the  
10 Sergeant's office, you know, and that's when I would hear the  
11 comments like the comments about the description of his  
12 genitals, and --

13 Q. So let's get into that, but let me ask you about, when he  
14 was a Lieutenant, he was still a Lieutenant in SID?

15 A. Yes, he was.

16 Q. So the Sergeant of ROP would report to him?

17 A. Yes.

18 Q. Okay. Now, let me ask you about the comments about his  
19 genitals. What sort of comments did he make?

20 A. He described his penis as fat as a tuna can.

21 Q. And he said that to you?

22 A. Yes, he said that in front of me in my presence. Him and  
23 Detective Potter would both be sitting there, and both of them  
24 have this thing about it's fat as a tuna can, and they would  
25 start laughing.

1 Q. Now, they would do that together in front of you?

2 A. Yes.

3 Q. And who is Detective Potter?

4 A. He became a member of the ROP team. He was also in the  
5 Northeast Impact unit when I was working that unit as well.

6 Q. Was he in the ROP team before or after you came in?

7 A. After.

8 Q. Do you know if he has any kind of relationship with Robert  
9 Smith outside of work?

10 A. Yes. They make it well-known they're very close. They  
11 call each other brothers. They've known each other since they  
12 were 12 years old.

13 Q. Did you ever complain, say to Detective Potter that you  
14 didn't want them talking about their penises in front of you?

15 A. That issue, I would say "You guys are gross" and walk out.  
16 It was just, you know, you can't -- it's hard to not react to  
17 that description.

18 Q. Did Detective Potter ever say anything else to you that  
19 you found inappropriate along these lines?

20 A. Detective Potter would make comments about joining him and  
21 his wife in sexual activity.

22 Q. Did you respond to that?

23 A. "No thanks."

24 Q. Did you ever flirt with Detective Potter?

25 A. No.

1 Q. Did you ever flirt with Sergeant Smith?

2 A. No.

3 Q. What about when he became a Lieutenant?

4 A. No.

5 Q. Did you ever joke around with them about sexual matters or  
6 sexual body parts?

7 A. No.

8 Q. Why not?

9 A. Because it's not appropriate in the workplace.

10 Q. Now, did Sergeant Smith ever say to you anything about  
11 whether you guys could be married?

12 A. Can you repeat the question?

13 Q. Sure. It's probably not a very good question. Did he  
14 make comments to you about wanting to be married to you?

15 A. He made -- on three or four occasions made comments to me  
16 about "If I wasn't married, I would be pursuing you."

17 Q. And what did you take that to mean when he said "pursuing  
18 you"?

19 A. Trying to date you, trying to have a relationship with  
20 you.

21 Q. Did you ever say that back to him?

22 A. No.

23 Q. What did you say to him?

24 A. I was afraid to offend Rob, and I wanted to keep things on  
25 a good keel with him. You don't want to make your boss mad.



1 And I would say, "Next life." That was the nicest way that I  
2 could think of to blow my boss off without offending -- He's a  
3 prideful person. He's a -- I would almost describe him as  
4 having an arrogance about him. That was the best way I could  
5 think of to tell -- Because I don't believe there's going to be  
6 a next life, that was the best way that I could think of to  
7 tell him no.

8 Q. And I think I may have glossed this over, but -- so let me  
9 go back. You said one of the reasons that you didn't want to  
10 say anything is because you loved your job. I don't think I  
11 asked you. Tell the jury a little bit about what ROP does.

12 A. ROP -- ROP is tasked with apprehending, watching, tracking  
13 the most violent repeat offenders in Albuquerque. You know, I  
14 can give you an example of one of my most favorite arrests. We  
15 had a group of people that were targeting ladies in grocery  
16 store parking lots, and they would find a lady walking out of  
17 the grocery store with her purse strapped over her shoulder,  
18 and they would drive up, the passenger would reach out and grab  
19 the lady's purse strap and they would floor the car and they  
20 would drag the lady through the parking lot, often breaking a  
21 hip or something like that, and these are the types of people  
22 that ROP got to go and apprehend, and so you might understand  
23 why I loved being able to go and arrest these types of people.  
24 They're -- They're out there preying on some of the best people  
25 in Albuquerque. And it was such a satisfying feeling for me to

1 go and arrest those kinds of people. And that's the kind of  
2 work that ROP did every day.

3 Q. Now, what was it like going to ROP? Did you have to wear  
4 a police uniform?

5 A. No. We dressed in plain clothes.

6 Q. You testified about what you wore for surveillance. So  
7 like the shorts you were wearing, what kind of shorts would  
8 those be?

9 A. Cargo shorts.

10 Q. And is that the times when Sergeant Smith or later when he  
11 was Lieutenant Smith would make comments about your clothing  
12 and your body?

13 A. Yes.

14 Q. Okay. If you weren't doing surveillance and that sort of  
15 thing, you still didn't have to wear a uniform?

16 A. No, we never wore a uniform.

17 Q. Why not?

18 A. Because we had to blend. We didn't know where we would  
19 end up and have to, you know, jump out into a mall to try to  
20 follow somebody. It could be anywhere in Albuquerque that we  
21 would need to be able to blend in with our community.

22 Q. What kind of cars did you drive?

23 A. We had one minivan at one point. Most of them were pickup  
24 trucks.

25 Q. Were these marked police cars?

1 A. No.

2 Q. Did they have lights on the top?

3 A. No. The lights were hidden, usually in the grille and in  
4 the taillights. You turn them on when you needed to do an  
5 apprehension, but very, very dark tint. You couldn't see in  
6 the vehicle at all.

7 Q. While you were in ROP, how often did you work?

8 A. Monday through Friday.

9 Q. What was your work schedule like?

10 A. Oh, our hours varied. We were on call 24/7 365 days a  
11 week. If there was a homicide, there was a primary and a  
12 secondary that would go out, and then if the rest of the team  
13 needed to go out, if we had a lead on who the offender was, the  
14 whole team would go out and work it.

15 Q. So was there a lot of overtime?

16 A. There was a lot of overtime.

17 Q. What generated a lot of the overtime?

18 A. Homicides generate a lot of the overtime.

19 Q. Now, in APD there is a homicide unit, isn't there?

20 A. There is.

21 Q. So why does -- why does ROP get called out to homicides?

22 A. Because when there's a homicide, the detectives start  
23 working the case and the scene, and then ROP ordains --  
24 actually starts doing the apprehension, and they start really  
25 looking for the offender and trying to get the offender in

1 custody.

2 Q. Did you often have to work overtime to surveil a suspect  
3 or arrest a suspect?

4 A. Yes.

5 Q. Why is that?

6 A. Because surveillance is very manpower-intensive. It's not  
7 possible to do it with just one or two people. You know,  
8 people that have committed a violent crime are often very  
9 suspicious of their surroundings. They're looking behind them.  
10 They're -- You know, they will pay attention and they will  
11 notice that the same two cars are behind them all the time, so  
12 it requires multiple vehicles constantly switching out so that  
13 they don't know that you're behind them. And the safest way to  
14 apprehend somebody who's basically schizophrenic in that moment  
15 is to overwhelm them and to take them usually on foot or in a  
16 vehicle so they can't cause a vehicle chase or endanger the  
17 community further.

18 Q. And these individuals that ROP is targeting, are they  
19 available Monday through Friday from nine to five?

20 A. No.

21 Q. Okay. So did you always -- Did you work odd hours?

22 A. Yes. We worked a lot of nights, a lot of weekends.

23 Q. Now, let's talk about when you came into the ROP unit.  
24 We'll put Sergeant Smith aside. What was the demeanor like  
25 from some of the detectives who were working then?

1 A. It was not welcoming.

2 Q. Now, sometimes when you're the new person on the -- on the  
3 unit, you get a little bit of hazing or something. Is that  
4 what you're talking about?

5 A. There was some of that. I believe some of that was just  
6 because we were the new people and -- And I will agree that  
7 there was a little bit of that going on, but there was some of  
8 it that was specifically because individuals that had been on  
9 that ROP team for a very long time were part of the good ol'  
10 boys club and they did not want a female in their team.

11 Q. And you came on the team with Detective Mike Hill?

12 A. Correct.

13 Q. Did you guys work together throughout the time you were in  
14 ROP?

15 A. Yes.

16 Q. Okay. How was Detective Mike Hill and your relationship?

17 A. Fine.

18 Q. Did you-all get along?

19 A. We got along fine.

20 Q. Did you ever have any reason not to like him or have  
21 conflict with him?

22 A. No.

23 Q. What is an Acting Sergeant?

24 A. An Acting Sergeant is somebody that is upgraded while the  
25 Sergeant is on vacation or away on leave for some reason.

1 Q. Before you got to ROP, had you ever been an Acting  
2 Sergeant?

3 A. Yes, I have.

4 Q. When was that?

5 A. As early as 2000.

6 Q. Was that when you were in Field Services or the Northeast  
7 Impact?

8 A. When I was still in uniform, I was upgraded to Acting  
9 Sergeant.

10 Q. Okay. And what about when you were an Impact detective?

11 A. No. That -- That unit had much, much more senior people  
12 in that unit than me, and people retired out of that unit when  
13 I was there. So I don't think I was Acting in Northeast  
14 Impact.

15 Q. Who choose the Acting Sergeant?

16 A. The Sergeant does.

17 Q. Okay. Throughout the time you were in ROP, were you ever  
18 made Acting Sergeant?

19 A. I was not.

20 Q. Okay. And I think we're going to get there in a little  
21 bit, but when did you ultimately leave ROP?

22 A. Officially or physically?

23 Q. Physically.

24 A. Left at the end of 2009.

25 Q. Okay. So for the period of time from 2004 when you got in

1 to 2009 you were never made the Acting Sergeant?

2 A. No.

3 Q. Okay. Were people that had come in to the ROP unit after  
4 you made Acting Sergeant while you were there?

5 A. Yes.

6 Q. Was there somebody in the ROP unit when you came in named  
7 Kevin Gagne?

8 A. Yes, there was.

9 Q. What was your relationship like with Kevin Gagne?

10 A. Very rocky.

11 Q. Can you tell the jury why it was rocky?

12 A. Kevin Gagne was not a fan of a female coming into ROP, and  
13 he made that very clear.

14 Q. How did he make that clear?

15 A. He mentioned to a friend of mine that --

16 MS. WILLIAMS: Objection, Your Honor. This is  
17 hearsay.

18 MR. VILLA: Your Honor, it's a party opponent.

19 THE COURT: Please approach.

20 (Bench conference on the record.)

21 MS. WILLIAMS: They're going to try to attribute  
22 statements of officers and detectives to be admissions of a  
23 party opponent that does not fit the definition of what an  
24 admission of a party opponent can be for the City of  
25 Albuquerque. The City cannot be responsible for the statements

1 of every garbage collector, police officer, IT person at the  
2 City. That is an impossible burden and not going to be  
3 something that would -- being an employee is not something that  
4 makes it an admission of a party opponent.

5 MR. VILLA: Well, right, Your Honor, I think it's  
6 just an employee, but I briefed the Court on this issue, I  
7 briefed the Court on this issue that I filed either Friday or  
8 Saturday, that the test in the Tenth Circuit is if they're an  
9 employee, they make the statement while they're in the scope of  
10 their employment and it's related to the matters at hand, that  
11 it meets the 801(d) exception for either agents or employees of  
12 the City.

13 THE COURT: Let me just note -- All right. So the  
14 question was "How did he," meaning Gagne, "make that clear?"  
15 And I guess part of the answer was "he mentioned to a friend of  
16 mine that --" I don't know what the statement is going to be.  
17 Can you proffer what the answer will be?

18 MR. VILLA: Yes. And the friend he told it to was  
19 also a APD police officer, Sergeant John Sullivan, but the  
20 statement was that, you know, "We got fucked; we had to take a  
21 skirt." So he's making it to another police officer while  
22 they're in the course of their business. We're not talking  
23 some unrelated issue.

24 THE COURT: And remind me. Gagne is the person  
25 originally who was part of the -- I'm trying to keep it down --



1 so Gagne had originally been named in the Complaint as a  
2 defendant?

3 MR. VILLA: He had -- She was testifying about the  
4 hostility that she experienced from Gagne.

5 MS. WILLIAMS: Your Honor, they had put the person  
6 that she -- he made that statement to on their witness list  
7 originally. They're not calling him. It is a classic  
8 out-of-court statement offered for the truth of the matter  
9 asserted, and that is not allowed.

10 MR. VILLA: And the reason not to call the other  
11 witness is because he's also a City employee and supervisor, in  
12 fact, and he --

13 THE COURT: Let me just ask you, are you going to  
14 move on? Are you going to ask additional questions relating to  
15 what Mr. Gagne may have said to this witness, just say in the  
16 next 20 minutes?

17 MR. VILLA: Your Honor, we can address it at lunch if  
18 that's what you're trying to say.

19 THE COURT: Let's do that. And I'll look at your  
20 brief. If you can cover other territory, and then I'll make a  
21 ruling on this issue.

22 MR. VILLA: Sure.

23 THE COURT: Because it will -- it's bound to recur.  
24 I think this is going to be an issue to deal with in our trial.  
25 So if you can just set it aside and move on to another area,

1 and I'll give you a ruling as to this particular objection.

2 MR. VILLA: Okay. Thank you.

3 (Open court.)

4 Q. (By Mr. Villa) Due to some technical issues I'm going to  
5 come back to that. But let's just talk about your  
6 interactions with Kevin Gagne. What were they like?

7 A. You know, just generally he just -- you're not -- you know  
8 when you're not welcome. I -- not specifically Kevin, but I  
9 wasn't given equipment when I first came to the team that I  
10 know Mike Hill was, because Mike told me he got equipment that  
11 I didn't get.

12 Q. Throughout the years that you worked with Kevin Gagne, did  
13 the relationship ever soften up a little?

14 A. I tried a few things after some time.

15 Q. What did you try?

16 A. I had a pink ROP shirt made just to try to, Hey, it's  
17 okay. I'm -- you know -- you know, I put a ROP symbol on my  
18 shirt and it was pink and -- to try to make him smile a little  
19 bit.

20 Q. Why did you make it pink?

21 A. Because I'm a girl.

22 Q. And you thought that would help break some of the ice with  
23 Mr. Gagne?

24 A. Yeah. I had a pink lunch box, and I put it on his truck  
25 and I took a picture of it and sent it to him and just -- you

1 know, trying to get the guy to lighten up a little bit. You  
2 know, a lot of time had gone by, and he was really the only  
3 one, you know, at that time that was left that was still, I  
4 felt, really being stubborn about it. He just, God, I need  
5 this guy to lighten up with me, you know. He was just was so  
6 hard to get through to Kevin. I'm trying to be part of the  
7 team. I'm not trying to be a threat to you. You know, just  
8 let it go.

9 Q. So Kevin Gagne was there throughout the time that you were  
10 at ROP 2004 to 2009?

11 A. The whole time.

12 Q. Were there other detectives that were there early on that  
13 ultimately left that you had similar issues with?

14 A. Yes.

15 Q. About how many, if you know?

16 A. Well, there was Dan Wolfe and Rich Lewis that were there  
17 and left right away, they retired -- they retired right away  
18 out of there within, oh, a couple of months of me being there.  
19 There was an individual by the name of Ryan Buckner that really  
20 gave me a hard time. He took me in the truck within my first  
21 week, in his truck, "Come on you're riding with me," and I  
22 thought, Okay, this is nice, somebody's going to take me under  
23 their wing and show me a few things.

24 And he said, "I'm going to show you some dope houses  
25 and things that we're working."

1           So when we got into the truck, he said -- excuse my  
2     language -- "What the F are you doing here?" And I looked at  
3     him kind of waiting for a smile or some indication that he was  
4     joking, and he was not joking. He was dead serious. And I  
5     wasn't sure really how to react to that, but I thought, Man,  
6     you better stand up for yourself here and let this guy know  
7     that this is not okay, and I said, "I earned my spot," you  
8     know, I said, "What do you mean? I earned my spot. What are  
9     you doing here?"

10           Because I had known that Ryan was a lateral that came  
11    over from State Police, and, you know, there's a little bit of  
12    controversy about what was he doing in ROP so soon, and so I  
13    thought, Man, what do I do? Do I -- Do I try to take a hard  
14    line here, or I wasn't really sure how to react to that. And  
15    then he proceeded to sort of quiz me throughout the drive, you  
16    know, gave me scenario questions and "What do you do if this  
17    happens? And what do you do if that happens?" And so I tried  
18    to answer scenario questions. He didn't seem to be happy with  
19    any of my answers. Okay. He's not the Sergeant. I guess he  
20    doesn't have to be happy with my answers. He was pretty --  
21    pretty rough day for me. You know, you make it to your dream  
22    spot and then that's your first week. I wasn't really sure how  
23    to take that. But that was my first week with Ryan Buckner.

24    Q.    Did Mr. Buckner ever slack up on you or relax a little  
25    bit?

1 A. You know, it took some time, but I have to be honest. I  
2 think with Ryan maybe he just was a jerk to new people. I have  
3 to maybe concede that, yeah, maybe with Ryan, maybe just --  
4 maybe he does that to new people. I don't necessarily think  
5 that it was because I was a girl. I think Ryan's just a jerk  
6 to new people.

7 Q. Did you have issues with anybody else in the unit?

8 A. I did with the -- with the guys that were first there that  
9 left. Lou Heckroth was one of the guys that were there. He  
10 was very quiet, but -- and he never said anything to me  
11 directly, but there was just these rumblings that I heard about  
12 the original crew --

13 MS. WILLIAMS: Objection. Hearsay.

14 THE COURT: Hold on. There's an objection. Please  
15 stopping answering.

16 Q. (By Mr. Villa) We don't have to get into rumors and  
17 things like that right now. We'll address that a little bit  
18 later. But with respect to his behavior towards you, how was  
19 Mr. Heckroth?

20 A. I'll just have to leave it as not welcoming.

21 Q. Okay. Did he ever lighten up before he left?

22 A. No.

23 Q. Were there individuals, besides Detective Hill, in the ROP  
24 unit throughout the time that you were there that were  
25 welcoming or nice to you?

1 A. Sure.

2 Q. And who were those individuals?

3 A. Danny Garcia, some of the people that came after I was  
4 there; you know, there was Ron Baca, Randy Robichaud that came  
5 afterward. You know, these people were my partners in there  
6 and we took care of each other and we made a lot of arrests and  
7 we got a lot of work done.

8 MR. VILLA: May I approach the witness, Your Honor?

9 THE COURT: You may.

10 MS. WILLIAMS: Your Honor, this is one of the  
11 exhibits that's the subject of a motion in limine that you have  
12 in abeyance, and so we would object to an attempt to use it.

13 THE COURT: Okay. Which exhibit is it?

14 MR. VILLA: 167, Your Honor.

15 THE COURT: All right. You may proceed, Mr. Villa.

16 Q. (By Mr. Villa) Ms. Welch, I've shown you a copy of a  
17 document marked Exhibit 167. Is that right?

18 A. Yes.

19 Q. And is this a document that you received or came to you in  
20 some way?

21 A. Yes, it is.

22 Q. Okay. Who is it from?

23 A. It's from Rob Smith.

24 Q. And where did you find this or where did you get this  
25 document?

1 A. This was pinned in my cubicle on my cubicle wall.

2 Q. And you had a cubicle in ROP?

3 A. Correct.

4 Q. Okay. Do you remember when it was pinned in your cubicle  
5 wall?

6 A. It was around 2005.

7 Q. Okay. And how do you know that it's from Rob Smith?

8 A. Because there's a note to me from somebody signed with an  
9 "R."

10 Q. Okay. And is there a picture on that document?

11 A. Yes, there's a picture of Rob Smith.

12 Q. Okay.

13 MR. VILLA: Your Honor, we would move to admit  
14 Exhibit 167.

15 THE COURT: Same objection?

16 MS. WILLIAMS: Your Honor, I object. It's hearsay  
17 and lacks foundation.

18 THE COURT: Well, I would agree that it does include  
19 hearsay, Mr. Villa. Do you have another theory?

20 MR. VILLA: Well, I think that what's written on  
21 there from Mr. Smith is not hearsay for the reasons we've  
22 discussed, and it's also offered to show that it was given by  
23 Mr. Smith to Ms. Welch.

24 MS. WILLIAMS: Lack of foundation, Your Honor.

25 THE COURT: All right. As to foundation, Mr. Villa,

1 I'll give you a little bit more room to try to establish that  
2 foundation. I don't know, we haven't heard where this document  
3 is from, when it was published, or anything of that nature.  
4 Without testifying or asking the witness to testify as to the  
5 contents, you can try to establish more foundation.

6 Q. (By Mr. Villa) Well, let me ask you this, Ms. Welch.  
7 There's a note written on there to you, correct?

8 A. Yes.

9 Q. And it purports to be from Mr. Smith?

10 A. That's correct.

11 Q. Okay. Did he often give you notes?

12 A. Yes.

13 Q. Is this a note that was related to some work that you were  
14 doing?

15 A. This is a note from Rob addressed to me, something he  
16 often called me, and this is -- this is a fundraiser that he  
17 did.

18 MS. WILLIAMS: Objection, Your Honor. This goes into  
19 the content.

20 THE COURT: It does get into the content.

21 Q. (By Mr. Villa) Let me ask you this.

22 THE COURT: Try it again.

23 MR. VILLA: Sure, Your Honor.

24 Q. (By Mr. Villa) Was the note romantic or sexual in  
25 nature?



1 A. Yes.

2 Q. Why do you say that?

3 A. Because there's a heart written on it, and it suggests  
4 that we have memories together.

5 MS. WILLIAMS: Objection, Your Honor. She is reading  
6 the thing I'm objecting to that lacks foundation.

7 THE COURT: I understand. All right. Mr. Villa,  
8 there is additional information on this exhibit beyond the  
9 note. Are you offering the entire document in addition to what  
10 is the testimony to the note?

11 MR. VILLA: Well, Your Honor, if she can read the  
12 note, then I think that's -- that's fine. I don't think the  
13 document has anything to do with what's on the note one way or  
14 another. And Mr. Smith -- for purposes of authentication, we  
15 can prove it up later -- Mr. Smith will agree that he wrote  
16 that note on this letter.

17 THE COURT: All right. I'll allow you to question  
18 the witness as to the note itself. The Exhibit 167 will be  
19 excluded.

20 MR. VILLA: Okay.

21 THE COURT: Okay. You may proceed that way.

22 Q. (By Mr. Villa) Ms. Welch, what is the note that  
23 Mr. Smith wrote to you?

24 A. It says "To T - Thanks for the memories. Heart R."

25 Q. Okay. Thank you.

1 MR. VILLA: May I approach?

2 THE COURT: You may.

3 Q. (By Mr. Villa) So you testified that you found this in  
4 your cubicle?

5 A. That's correct.

6 Q. Where was it in your cubicle?

7 A. It was pinned to the soft wall of my cubicle.

8 Q. And do you know how it got there?

9 A. I don't know how it got there. I assume that Rob pinned  
10 it there.

11 Q. When you saw it pinned up on your cubicle, what did you do  
12 with it?

13 A. I took it down.

14 Q. Did you ever make copies of that document before it was  
15 written on to hand out to the ROP unit?

16 A. No, I did not.

17 Q. Do you know where that document came from that that note  
18 was written on?

19 A. No, I do not.

20 Q. Do you know why he gave you that note?

21 A. I don't know why he gave me that note.

22 Q. Had he left you other notes like that before or since  
23 then?

24 A. The one that you had already --

25 Q. Well, I guess notes that are -- that you would

1 characterize as -- Well, let me ask you this. Did you  
2 characterize the note as work-related?

3 MS. WILLIAMS: Objection, Your Honor. This is  
4 continued leading. It's not foundational. We object.

5 THE COURT: All right. Just rephrase the question,  
6 Mr. Villa, as to what else may have occurred by way of notes or  
7 things of that nature.

8 MR. VILLA: Sure.

9 Q. (By Mr. Villa) Did he give you notes that were related  
10 to work?

11 A. He did give me notes related to work.

12 Q. Did he give you notes that you thought were not related to  
13 work?

14 A. He gave me notes that I thought were somewhat crossing the  
15 line.

16 Q. Like that note?

17 A. Absolutely.

18 Q. And why did you think that note crossed the line?

19 A. Because it -- it's like a love note. It's got a heart on  
20 it and he's calling me "T." And, you know, "Thanks for the  
21 memories" is something that's inappropriate for a supervisor to  
22 write to a subordinate. It doesn't belong in the workplace.

23 Q. Did you ever see him write notes like that to the other  
24 detectives in ROP?

25 A. No.

1 Q. Now let's talk about October of 2007. By then Robert  
2 Smith is a Lieutenant now, right?

3 A. Correct.

4 Q. Were you dating somebody named David Maes?

5 A. Yes, I was.

6 Q. Can you tell the jury just a little bit about that?

7 A. I was engaged to a man named David Maes who was a police  
8 officer with the APD.

9 Q. Did you-all live together?

10 A. Yes, we did.

11 Q. Okay. Regarding that, did you ever get a phone call from  
12 Lieutenant Smith?

13 A. Yes.

14 Q. What did Lieutenant Smith tell you in that phone call?

15 A. He asked me if I was at the office.

16 Q. And what did you say?

17 A. I was.

18 Q. Did he tell you why he was calling?

19 A. "I need to talk to you."

20 Q. And then what happened?

21 A. And he said, "Stay there. I'm on the way."

22 He arrived at SID and came to my cubicle where I was  
23 working on something. He walked in and he grabbed my hand and  
24 led me out of the building by my hand.

25 Q. At that point in time did he tell you why he was doing

1 that?

2 A. No.

3 Q. Did you ask him?

4 A. No. It was very quick. Just grabbed my hand and took me  
5 out of the doors.

6 Q. What happened once you were outside?

7 A. He pulled me in very tight, my face was pushed here in his  
8 chest and was very, very, very tight, and I remember, I  
9 couldn't breathe. My nose was smashed. I couldn't breathe.  
10 And I started becoming very fearful, because my brother was out  
11 of town and I thought something has happened to him. And he --  
12 I sort of pushed away, and I'm -- I said, "What's wrong?" And  
13 he says, "Do you want to go have coffee or lunch -- breakfast?  
14 Breakfast or coffee?"

15 I said, "No. What's wrong, what is wrong?"

16 And he says, "Let's go sit in my car."

17 So we get into the car, and he holds my hand. And  
18 I'm thinking, this is -- you know, is extremely awkward. And  
19 he says, "They have David down at IA."

20 Q. Now, what's IA?

21 A. Internal Affairs.

22 Q. Okay. And you knew he was talking about David Maes?

23 A. David Maes, yes. And I said "For what? For what?"

24 And he says, "He raped a prisoner."

25 And I said "What?"

1 And he says, "Yes, he raped a prisoner five days  
2 ago."

3 And, you know, your mind is going through a million  
4 things, and I'm thinking, Oh, I need to get my things. I don't  
5 want to see him. I have got to get home and beat him home. I  
6 didn't know, would he be arrested, you know, what is going to  
7 happen to him. Trying to think of what to do first, you know,  
8 who do I need to call. It's embarrassing. And Rob at that  
9 moment proceeded to tell me at that moment that, again, "If I  
10 was not married, I would be pursuing you."

11 I'm thinking, that is not making me feel better. Why  
12 are you telling me that? That is the last thing I want to hear  
13 right now. You know --

14 Q. And you thought that. Did you tell him that?

15 A. No. I -- All I wanted to do was beat him home. That was  
16 number one in my mind, was who's going to help me get my stuff.

17 Q. You're talking about beat Mr. Maes home?

18 A. Yes.

19 Q. Now, at this point in time, you didn't know if he was  
20 arrested and in jail or anything like that?

21 A. Just knew that he was at IA.

22 Q. Okay.

23 A. And, you know, then Rob proceeds to tell me details about  
24 the victim.

25 Q. And you don't necessarily have to get into the details

1 about the victim, but did you learn at some point when APD knew  
2 about this incident with Mr. Maes?

3 A. Yes.

4 MS. WILLIAMS: Objection. Calls for speculation.

5 Q. (By Mr. Villa) Well, how did you learn about it?

6 THE COURT: Well, I'll sustain the objection. Just  
7 rephrase, Mr. Villa.

8 MR. VILLA: Sure.

9 Q. (By Mr. Villa) At some point did you come to know when  
10 APD found out that Mr. Maes had done this?

11 A. I did.

12 Q. How did you find that out?

13 A. Because I asked Rob, "Are you -- Are they sure that he did  
14 this?"

15 Q. And what did Rob say?

16 A. "Yes. David admitted it five days ago."

17 Q. I'm sorry, he said what?

18 A. "David admitted to this five days ago."

19 Q. Okay. Five days from the time he was having this  
20 conversation with you in the car?

21 A. Correct.

22 Q. Okay. What did you think about that?

23 A. I was horrified. I had been living in the same house with  
24 this man who knew that he admitted to his supervisors what he  
25 had done, and especially in the ROP unit, knowing what people

1 are capable of when they're facing those kinds of possible  
2 charges. You know, ROP is often tasked with arresting police  
3 officers that have gone bad or police officers that are accused  
4 of things that are horrible crimes. It sometimes happens in  
5 our profession, unfortunately, and ROP is the unit that has to  
6 go and pick up police officers. I've had to arrest people that  
7 are my colleagues. And that is one of the unfortunate tasks  
8 that ROP has to do. It is not a fun assignment, but I'm one of  
9 the people that was trusted with having that confidential  
10 information the whole time I was in ROP. And now my own  
11 department couldn't even tell me. You know, I didn't expect  
12 them to tell me, Hey, this, that, and the other about the  
13 investigation, but David already admitted to it. There was no  
14 secret. At least tell me, "Hey, get away from this weirdo. Go  
15 stay with your brother."

16 I'm the only one that didn't know. David knew. He  
17 already confessed to it apparently five days earlier. You  
18 know, what if he decided, Hey, I don't want to go through this,  
19 I'll just do a murder-suicide or something of the such. What  
20 if I was exposed to something of a sexual nature? I mean, all  
21 these horrible things on my mind on top of dealing with Rob  
22 Smith's creepy way of consoling me. I wasn't crying even at  
23 the moment. I just was overwhelmed and was trying to accept it  
24 all in my mind, and I had Rob Smith now saying, "Let me take  
25 you home."



1 Q. Let me -- Let me -- Let's talk about that. You testified  
2 that he said, you know, "If I wasn't married, I'd be pursuing  
3 you." What did he say after that?

4 A. Well, after that it was "Let me take you home. Let me --"

5 Q. So he was offering to take you home?

6 A. Yes, he offered several times, very insistent about it.  
7 "Let me take you home. Let me help you get your stuff."

8 Q. What did you say?

9 A. I said, "No, that's okay. I'll call Michelle, I'll call  
10 my friend, Michelle, she'll help me get my stuff."

11 "Please, let me just take you. I can help you. Let  
12 me just drive you. I'll have them hold him at IA until we're  
13 done."

14 "No thanks. Let me just go. I'll just -- Michelle  
15 will help me."

16 "Just let me just help you with this. Just let me  
17 help you."

18 "No."

19 You know, you don't want your boss in that moment  
20 anyway, and then you don't want your boss at your house. I'm  
21 sorry, no offense. Let me just go handle this, you know. I --  
22 Especially after you're making comments. I don't know why you  
23 think that's going to make me feel better in that comment, but  
24 it wasn't. It was making it worse.

25 THE COURT: Mr. Villa, I just see the time.

1 MR. VILLA: This is a good time to take a break, Your  
2 Honor.

3 THE COURT: Okay. We will do that. Ladies and  
4 gentlemen, it's just about lunchtime. We'll take a lunch  
5 break. We'll recess, and then if you can be ready in the  
6 deliberation room at 1:00, we'll call you in just as soon as  
7 possible. I may take a few more minutes just to cover a few  
8 issues with counsel if necessary to do that. Please remain  
9 patient. We'll call you in just as soon as possible.

10 All right. Please rise for the jury.

11 (Jury out at 12:02 p.m.)

12 THE COURT: All right. Ms. Welch, you may step down  
13 from the stand. I'm going to instruct you, however, Ms. Welch,  
14 I'm going to instruct you not to discuss your testimony at all  
15 during the break. All right?

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. Mr. Villa, as to the objection  
18 that Ms. Williams stated originally, I think it was about the  
19 conversation with Mr. Gagne, you mentioned a brief that you  
20 submitted to the Court during the weekend.

21 MR. VILLA: Yes, Your Honor. I'll get you that. I  
22 believe it's 432. I'm going to confirm that right now, Your  
23 Honor. But it essentially sets out the Tenth Circuit's test  
24 for statements of a party opponent when you're dealing with the  
25 employer or a municipality like the City and cites to some

1 Title VII cases along those lines. It is document 432. That's  
2 correct. And there's a three-part test that's discussed. I  
3 believe that comes from Fischer v. Forestwood, 525 F.3d 984.  
4 That's not --

5 THE COURT: Let me just ask you.

6 MR. VILLA: Sure.

7 THE COURT: I tried to summarize the question that  
8 was asked during the break -- or during the bench conference.  
9 So the question was -- Let me just summarize here. Can you  
10 tell the jury why it was rocky? This is the relationship with  
11 Kevin. The answer: "Kevin Gagne --" It's not altogether  
12 here. Then the next question is: "How did he make that  
13 clear?" And the answer began: "He mentioned to a friend of  
14 mine that . . ."

15 Now, the answer suggests that it's something that  
16 Mr. Gagne said to somebody other than Ms. Welch.

17 MR. VILLA: Yes, Your Honor.

18 THE COURT: Okay. And the Tenth Circuit case law  
19 will address that?

20 MR. VILLA: Well, I think it can be applied. So I  
21 agree that there's two levels of hearsay, what Mr. Gagne told  
22 to -- it's Sergeant John Sullivan, and I can lay that  
23 foundation with Ms. Welch through her testimony and what  
24 Sergeant John Sullivan told to Ms. Welch. But if you apply the  
25 Tenth Circuit test to both of those layers, you can get to the

1 result that that statement is a party admission under  
2 801(d)(2)(D).

3 And the test is essentially -- Well, I guess it's  
4 more two parts, but it's, you know, the party seeking to admit  
5 the statement must establish the existence of and employment  
6 relationship independent of the declarant's statements. So  
7 Ms. Welch can testify, and already has, about Kevin Gagne's  
8 employment relationship as well as Sergeant Sullivan's. And  
9 then second, that the statement must be made during the  
10 existence of the declarant's agency or employment. And  
11 finally, there is the third: The statement must concern a  
12 matter within the scope of the declarant's employment.

13 And so all of those three factors can be applied to  
14 both of the statements at issue with Mr. Gagne's statement  
15 about having to take a skirt.

16 THE COURT: All right. Ms. Williams, same objection?

17 MS. WILLIAMS: Yes, Your Honor. This statement does  
18 not fall within the scope of the 802 exception at all. It was  
19 not a statement made within the scope of the employment  
20 relationship between Lieutenant Welch and Detective Gagne. He  
21 was not her Sergeant. He may have upgraded on occasion to an  
22 acting Sergeant, but that does not put him in the relationship  
23 of being able to control, as the case law requires, in  
24 employment decisions regarding Ms. Lieutenant Welch. So we  
25 don't believe it falls within this exception.

1           Also, the person who heard the statement is available  
2 and was on their witness list and they've chosen not to call  
3 him. They can't use that to make it so that we can't  
4 cross-examine regarding that statement, if it was made, when it  
5 was made, who, what were the circumstances. We believe it was  
6 made at a barbecue.

7           THE COURT: Okay. I've got docket 432. I'll look at  
8 that over the break, and then I'll give you a ruling. For now  
9 we'll be in recess. Please get back so we can get started at  
10 1:00. Okay. Thanks everyone.

11           (Court stood in recess at 1:09 p.m. as follows:)

12           THE COURT: Folks, we have a juror who, because I  
13 had -- I asked you if I should ask if they can hear. They all  
14 say they can hear. Though there's one who sounds like she is  
15 having trouble seeing the witness from her vantage point. I  
16 think this would be Number 10, who sits in the back row all the  
17 way to the left. So I think it's just because there are other  
18 members of the jury that sit in front of her right in the way,  
19 and so the first thought that occurred to me is just ask her if  
20 she -- if it would be better if she can just move down to the  
21 front row. The chairs in the jury box are stationary, so you  
22 can't wheel around at all to get a better angle. This does  
23 kind of change the numbering, but we know who she is and that  
24 she's Number 10.

25           Mr. Villa, any objection if we did that?

1 MR. VILLA: I don't, Your Honor.

2 THE COURT: Okay. Ms. Williams?

3 MS. WILLIAMS: Your Honor, I think we can keep track  
4 of ten of them. They're a whole bunch --

5 THE COURT: Yes, sure. We'll allow Number 10 to move  
6 down to the front row. I guess it would be on the sixth chair  
7 from the witness stand. Okay.

8 MR. VILLA: One thing I was going to ask for Your  
9 Honor whenever it's convenient, is a copy of the seating chart.  
10 I know it will change now.

11 THE COURT: Sure. You should have that. We'll get  
12 you an official list. We'll get an official seating chart.

13 Now, let me just say before we brought the jury in, I  
14 had a chance -- before we bring the jury in, I had a chance to  
15 look at the brief that's document 432. It was filed on  
16 May 12th. I guess that was Saturday.

17 MR. VILLA: I apologize. Saturday.

18 THE COURT: That's all right. It's in front of me,  
19 and I have looked at the rule and looked at some of the law  
20 provided to me, and I'll agree that the standard is the  
21 three-part test that, Mr. Villa, you've indicated in your  
22 brief, and that the Court inquires of a number of different  
23 things, including whether the party seeking to admit the  
24 statement must establish the existence of an employee -- or  
25 rather an employment relationship independent of the

1 declarant's statement offered as evidence and that the  
2 statement must be made during the existence of the declarant's  
3 agency or employment, and then finally that the statement must  
4 concern a matter within the scope of the declarant's  
5 employment.

6 So in the first instance there was an objection to I  
7 guess what Mr. Gagne would have said to another individual, and  
8 that was commenting on Ms. Welch's employment in the ROP and  
9 words to the effect of the skirt to describe Ms. Welch.

10 Now, I don't see, but -- Ms. Williams, I don't see  
11 whether there's an issue within this three-part inquiry as to  
12 the statement itself. Rather, as to the person making the  
13 statement. That being Mr. Gagne.

14 MS. WILLIAMS: That's my understanding.

15 THE COURT: Okay. I need more context. When was the  
16 statement made?

17 MR. VILLA: Sure. The statement by Mr. Gagne was  
18 made early in 2004 when Ms. Welch made it in the ROP team.  
19 Ms. Welch was told the statement many years later by Sergeant  
20 John Sullivan, who said to her that Kevin Gagne upon finding  
21 out that she was at ROP -- forgive my French -- "We got F'd.  
22 We had to take a skirt."

23 THE COURT: When you say many years later, tell me  
24 when.

25 MR. VILLA: I believe it was 2009 when all of the

1 issues were taking place with Ms. Welch's employment.

2 THE COURT: When did Mr. Gagne leave the Police  
3 Department, if he did at all?

4 MR. VILLA: I believe he left in 2010. Maybe 2011.  
5 So the statement was made in 2004. Ms. Welch found out about  
6 it in about 2009. Mr. Gagne left, I think he retired about a  
7 year or so later.

8 MS. WILLIAMS: He retired December 17th, 2011.

9 MR. VILLA: Excuse me. 2011.

10 THE COURT: Okay. So if there's -- if it fits within  
11 the exception in the first instance, that is, if it's made by  
12 Mr. Gagne, I -- it's my -- it would be my judgment that it fits  
13 within the exception as also hearsay within hearsay or an  
14 exception to that particular rule, that it qualifies within the  
15 three-part test that is provided in Fischer v. Forestwood.  
16 That's 525 F.3d 984, 385, Tenth Circuit, 2008, cited in the  
17 brief. My examination of the rule supports that ruling.

18 Ms. Welch, by the way, you may retake the witness  
19 stand.

20 So I'm going to allow the statement. Now, here's my  
21 concern. Because your brief relates to a number of other  
22 exhibits, and this is where I cautioned counsel when we had a  
23 pretrial conference on Thursday, that counsel consider what of  
24 the exhibit is most relevant, is most probative, is  
25 noncumulative, and is -- well, wouldn't result in a waste of



1 time. These are all factors that I would consider under  
2 Rule 403. So as we go down this road and as you seek to elicit  
3 testimony as to statements that you would purport or you would  
4 argue to fit within this exception, where I will be most  
5 interested in hearing from counsel is an exhibit that contains  
6 that statement but contains other statements --

7 MR. VILLA: Got it.

8 THE COURT: -- that don't necessarily fit within any  
9 exception and that nevertheless may be hearsay. These are just  
10 some of the concerns that I have with offering an exhibit with  
11 many, many statements that may or may not be relevant or  
12 probative. That's my, I think, cautionary words to counsel at  
13 this particular time.

14 As to the exhibits that you've included in your  
15 brief, Mr. Villa, and that remain subject to an objection by  
16 the defense --

17 MS. WILLIAMS: Your Honor, may I make a record on  
18 this one?

19 THE COURT: You may.

20 MS. WILLIAMS: I believe the evidence will show that  
21 Detective Gagne was not involved in the decision-making process  
22 affecting an employment action. As a detective, he did not  
23 make the decision regarding any of Lieutenant Welch's  
24 employment, so I don't believe he falls under that first part  
25 of the test. If he does -- And I understand your ruling, but I

1 believe the evidence that's going to come in today will  
2 indicate that that is not the case. So I will object to the  
3 admission because I think it misses one of the prongs.

4 If you find that it found all three of the prongs,  
5 then we would do a 403 balancing, and she doesn't learn of it  
6 until five years after the statement was made from someone who  
7 heard it we don't know when or where, and the probative value  
8 of that remote statement compared to the prejudicial value to  
9 the defendants in this action, that balancing test weighs in  
10 favor of the defendants and excluding the statement that she  
11 heard after she filed her EEO, after she filed two EEO's, that  
12 people are then talking with her about this. And so we would  
13 say that there's two reasons it should be excluded. I  
14 understand your first, and I don't know that you've done a 403,  
15 and you can rule on that.

16 THE COURT: Okay. Let me just push the pause button  
17 right there. Does this statement go to a particular claim,  
18 Mr. Villa?

19 MR. VILLA: Well, I think it fits probably all three,  
20 because Kevin Gagne is integrally involved in all three claims,  
21 discrimination, the harassment and the retaliation. He gets  
22 involved as you've heard already the testimony from the  
23 beginning, and then he's involved in the disciplinary action as  
24 well, and he's also involved in the punctuality memo. He's the  
25 Acting Sergeant at the time that ordered Terysa Welch to go to

1 the station when she was supposed to go to the firing range.

2 THE COURT: Well, the claims include actions or  
3 statements made by supervisors and coworkers.

4 MR. VILLA: Yes.

5 THE COURT: Well, okay. So that was the one question  
6 I didn't ask, but having heard the answer to that question and  
7 with Ms. Williams's arguments, I think even within 403 I will  
8 find it's sufficiently probative to admit the statement even in  
9 view of what is argued to be unfairly prejudicial.

10 Now, the weight to be assigned to this statement,  
11 that's going to be up to the jury. The five years in time,  
12 that's going to be, I think, for the jury to decide whether or  
13 to what extent it goes to the claims ultimately. So that's my  
14 ruling, and then we'll reconvene with the jury.

15 MR. VILLA: Your Honor, just quickly. I showed it to  
16 the jury in opening. We already used it. I want to make sure  
17 the record is clear Exhibit 166 is admitted. That's the  
18 fitness evaluation.

19 THE COURT: That's my notes. I admitted it in  
20 pretrial.

21 MR. VILLA: I remember that as well, Your Honor.  
22 Thank you.

23 THE COURT: Okay. All right, then. Please rise, and  
24 we'll get the jury in here.

25 (Jury in at 1:20 p.m.)

1 THE COURT: Okay. Welcome back, everyone. Please be  
2 seated.

3 All right. I see all our members are present with  
4 some reordering, trying to accommodate everybody.

5 Folks, as you can see, the chairs are stationary in  
6 the jury box. The layout of the courtroom is what it is.  
7 We'll just have to do our best with what we have, but insofar  
8 as maybe everybody -- Let me just ask. Can you see the witness  
9 now from where you sit?

10 Okay. I see everybody's head nodding.

11 All right, Mr. Villa.

12 MR. VILLA: Thank you, Your Honor.

13 Q. (By Mr. Villa) And, Ms. Welch you might want to pull the  
14 microphone over. There you go.

15 When we left off before lunch, you were talking about  
16 a conversation you had with then-Lieutenant Smith in your  
17 car -- in his car about Mr. Maes. Can you tell the jury  
18 approximately how many times you think Mr. Smith asked you to  
19 take you home -- that he would take you home?

20 A. Four to five.

21 Q. Ultimately did he take you home?

22 A. No, he did not.

23 Q. Why not?

24 A. Because I continued to tell him no.

25 Q. Now, after this incident occurred with Mr. Smith and

1 Mr. Maes, what did you do?

2 A. I went to my house and I grabbed as many quick belongings  
3 as I could, my animals, and I went to my girlfriend's house,  
4 and then I -- I took a -- I called my family and I -- I went  
5 home to Montana.

6 Q. How long were you in Montana?

7 A. I don't recall exactly. Seven days maybe.

8 Q. While you were in Montana, did you get contacted by  
9 anybody that you worked with?

10 A. I did. I got contacted daily by Rob Smith.

11 Q. How did he contact you?

12 A. Telephone call every day.

13 Q. What was he saying to you when he called you?

14 A. "What are you thinking? How are you feeling?" You know,  
15 just questions like that.

16 Q. Did he make any other statements about pursuing if he  
17 weren't married or things along those lines concerning those  
18 phone calls?

19 MS. WILLIAMS: Objection, Your Honor. Leading.

20 THE COURT: Sustained.

21 Q. (By Mr. Villa) Did he make inappropriate statements to  
22 you during those phone calls?

23 A. No. I kept the conversations fairly short.

24 Q. Did you appreciate getting the calls every day?

25 A. I didn't.

1 MS. WILLIAMS: Objection. This is also leading. At  
2 some point it's not foundational.

3 THE COURT: Sustained. Sustained. Just rephrase  
4 Mr. --

5 Q. (By Mr. Villa) Did you ever indicate to Mr. Smith that  
6 you wanted him to call you?

7 A. No.

8 Q. How did you feel about receiving the phone calls on a  
9 daily basis?

10 A. I felt they were invasive.

11 Q. Okay. So now let's fast forward a bit in time to 2009.  
12 We know that Lieutenant Smith had been promoted to Lieutenant  
13 from Sergeant. Who was the Sergeant then at that point in time  
14 of ROP?

15 A. David Hubbard.

16 Q. How was your relationship with David Hubbard in 2009?

17 A. It was fine for a while, just neutral.

18 Q. Did you ever have any issues or problems with him as a  
19 Sergeant?

20 A. Not directly, no.

21 Q. Okay. So I want to talk to you about July of 2009. Was  
22 there a time when you received an order from Mr. Gagne, Kevin  
23 Gagne, when he was the Acting Sergeant?

24 A. Yes, there was.

25 Q. Okay. And again, Kevin Gagne, you were testifying about

1 him earlier this morning and we were asking -- I was asking you  
2 about his feelings towards you and you were going to testify  
3 about a statement that you heard Kevin Gagne made. Do you  
4 remember that?

5 A. Yes.

6 Q. Who told you that Kevin Gagne made the statement?

7 A. Sergeant Sullivan.

8 Q. And who is Sergeant Sullivan?

9 A. He was a Sergeant at the time of Burglary.

10 Q. Okay. When did Sergeant Sullivan tell you about this  
11 statement?

12 A. I don't recall exactly. I believe it was around 2009.

13 Q. And what did Sergeant Sullivan tell you that Kevin Gagne  
14 said?

15 A. He stated to Sergeant Sullivan that -- excuse my language  
16 again -- "We got F'd. We had to take a skirt."

17 Q. And when did Kevin Gagne make that statement?

18 A. When I got accepted on to the ROP team.

19 Q. Is that the way Sergeant Sullivan told you "We got F'd,"  
20 or did he use the word?

21 A. He used the word.

22 Q. Okay. When he told you that statement in 2009, was that  
23 consistent or inconsistent with Kevin Gagne's attitudes toward  
24 you?

25 A. That was very consistent.

1 Q. So, now let's talk about the order that Kevin Gagne gave  
2 you. Do you recall why he was Acting Sergeant in July of 2009?

3 A. I don't specifically know the reason. Sergeant Hubbard  
4 was off for some reason so he was Acting Sergeant.

5 Q. Was Mr. Gagne Acting Sergeant often?

6 A. Very often.

7 Q. And when he's Acting Sergeant, do you have to treat him  
8 the same as you would a Sergeant?

9 A. Exactly the same.

10 Q. So tell us about the order he gave you.

11 A. We had finished an arrest. I don't remember the subject's  
12 name. It was a hot summer day, and we went to grab a drink at  
13 a Sonic there off of Eubank, and Kevin received a phone call  
14 from Sergeant Hubbard instructing him to tell the team, the  
15 following workday that we were to arrive at SID, our work  
16 building, and we were to do time sheets at 9:30 in the morning  
17 and then we were going to go to the tac range, which is a  
18 nearby range that SID uses to practice our shooting.

19 Q. You say the "tac range." Is that for tactical?

20 A. Tactical range, yes.

21 Q. Okay. So you were with Mr. Gagne following this arrest.  
22 Was anybody else with you?

23 A. I believe Detective Potter and Detective Hill.

24 Q. Okay. And so what was the order that Mr. Gagne gave you?  
25 To go to SID at 9:30?



1 A. Yes, and meet at 9:30, do our time sheets, get the  
2 paperwork out of the way, and then walk over, do our shooting  
3 training.

4 Q. And that was for the next day?

5 A. The next workday.

6 Q. Tell us what you did the next workday.

7 A. I got to SID about 9:20 in the morning, did my time  
8 sheets. I noticed Hubbard's door was open. Didn't see anybody  
9 else. A short time later Detective Hill shows up. I said,  
10 "Where is everybody?" Detective Hill says, "I don't know."

11 He started doing time sheets. He raised Sergeant  
12 Hubbard on the radio on our ROP channel, and he says, "Hey,  
13 we're at the office. Where's everybody at?" Sergeant Hubbard  
14 responds "We're at the tac range and we have about 20 minutes  
15 left." And it's probably a ten-minute drive at least out to  
16 the tac range from our SID office. So it wasn't worth the  
17 drive to drive ten minutes to only shoot for ten minutes, so  
18 Detective Hill and I went out looking for some of our suspects.  
19 We just went to work.

20 Q. Now, after that, after you went to work, did you get a --  
21 have a conversation with Sergeant Hubbard about the training at  
22 the tac range?

23 A. I did.

24 Q. Tell us about that.

25 A. He got me on my Nex telephone, and I said, "Good morning,

1 Sarge." He said, "Where were you?" He had a bit of an  
2 irritated tone. I could tell right away. And I said "Hey,  
3 look, I had different instructions from Kevin Gagne. He told  
4 us to be at the office at 9:30 and we were going to go do the  
5 training afterward."

6 "No, you weren't. You were told to be at training."

7 I said, "Look, Sarge, I don't want to get sideways  
8 with you. Can you check with Mike, because he heard the same  
9 thing?"

10 Q. And who is Mike?

11 A. Mike Hill.

12 Q. Mike Hill. Okay.

13 A. And he says, "We'll talk about it later." And that was  
14 again the conversation. We worked until midnight that night.  
15 We didn't talk about it anymore. And three days later I  
16 received a memo from him.

17 MR. VILLA: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. (By Mr. Villa) Ms. Welch, I'm showing you what's been  
20 marked as Plaintiff's Exhibit 46. Is that the memo that you  
21 received?

22 A. Yes, it is.

23 MR. VILLA: Your Honor, I move to admit Exhibit 46.

24 THE COURT: Any objection?

25 MS. WILLIAMS: No objection, Your Honor.

1 THE COURT: 46 is admitted.

2 (Plaintiff's Exhibit 46 admitted into evidence.)

3 MR. VILLA: May I publish?

4 THE COURT: You may publish.

5 Q. (By Mr. Villa) So there's the exhibit number. I'll  
6 below it up a little bit.

7 How did you receive the memo?

8 A. We first had a briefing that morning, a team briefing in  
9 Sergeant Hubbard's office, and then he excused the remainder of  
10 the team, he and I were alone, he shut the door, and he handed  
11 me this memo.

12 Q. Okay. And the first paragraph talks about this incident  
13 on July 17th, 2009, about a briefing that had occurred on  
14 Monday, July the 13th.

15 A. Yes.

16 Q. And then the second paragraph is the July 24, 2009,  
17 training day scheduled at the tac range, right?

18 A. Yes.

19 Q. Okay. So let me ask you first about the July 13th, 2009,  
20 briefing. Were you at that briefing?

21 A. I was not at that briefing.

22 Q. How come you weren't at the briefing?

23 A. I was comp'd off that day for a couple hours.

24 Q. What's comp'd off mean?

25 A. It's the same as vacation time. It just comes from a

1 different bank, time-off bank.

2 Q. When you get comp'd off, do you have paperwork?

3 A. Yes.

4 Q. Did you have the paperwork for that comp time?

5 A. I did.

6 Q. Did you, when you received the memo from Sergeant Hubbard,  
7 attempt to talk to him about that?

8 A. I did. I pointed it out to him that I was com'p off for  
9 that date and that he had signed that comp slip authorizing the  
10 time off, that I had also called in that day, on July 13th, to  
11 the Acting Sergeant who I believed was Mike Hill, and I  
12 notified Mike Hill that I wouldn't be at that briefing for a  
13 personal appointment.

14 Q. So you just testified that you think at that time Mike  
15 Hill was the Acting Sergeant?

16 A. That's what I believed.

17 Q. Had Mike Hill been made Acting Sergeant previous to this  
18 time?

19 A. Yes. It was usually Mike Hill or Kevin Gagne.

20 Q. Okay. So you and Mr. Hill, you testified earlier, both  
21 came in to ROP at the same time, correct?

22 A. Correct.

23 Q. And you think he had been made Acting Sergeant on multiple  
24 occasions?

25 A. He alternated usually between Mike Hill and Kevin Gagne.

1 Q. Okay. As an Acting Sergeant, do you get higher pay?

2 A. Yes.

3 Q. Just for the time that you're acting?

4 A. Correct.

5 Q. Okay. So what did Sergeant Hubbard say when you told him  
6 that you had been comp'd out and had paperwork for that?

7 A. He wasn't receptive to the conversation. He didn't want  
8 to talk about it. He just wanted me to receive the memo. He  
9 got a phone call in the middle of the conversation and he  
10 walked out of the office.

11 Q. Now, he says in here at the very first sentence "As you  
12 recall on July 17...I advised you verbally." Did you recall  
13 having conversation with Sergeant Hubbard where he advised you  
14 verbally about letting him know when you were going to be  
15 missing a briefing with regard to this July 17th briefing?

16 A. No.

17 Q. Was there a conversation?

18 A. I don't recall any conversation about that.

19 Q. And then what about for July 24th? Did you attempt to  
20 talk to Sergeant Hubbard about the reason why you were at the  
21 SID office and not at the range?

22 A. Yeah. I asked him to talk to Mike and so that Mike could  
23 confirm that we were in fact told by Acting Sergeant Gagne to  
24 be at the office. Mike understood the same instructions that I  
25 understood and that's why Mike was at the office at the same

1 time that I was.

2 Q. And what did Sergeant Hubbard say to you about that?

3 A. He wouldn't talk to Mike.

4 Q. Did he tell you whether he had tried to talk to Mike?

5 A. I know that he didn't talk to Mike Hill because I checked  
6 with Mike Hill.

7 Q. Now, the memo is also cc'd to Lieutenant R. Smith. Is  
8 that Rob Smith?

9 A. That's correct.

10 Q. After receiving this memo, did you try to talk to  
11 Lieutenant Smith about it?

12 A. Yes, I did.

13 Q. Why did you want to talk to Lieutenant Smith about this  
14 memo?

15 A. Well, for several reasons. Usually before somebody  
16 receives a written memo that's going to go into their personnel  
17 file, you would make sure you have your facts straight before  
18 you're going to go to this level. The facts were not accurate.  
19 I had a comp slip showing that the first incident that he's  
20 documenting in the punctuality memo was not in fact true, the  
21 facts were not accurate in his memo. Secondly, I asked him to  
22 simply talk to the other detective involved in the same  
23 incident. It seems like a simple request to make. He wouldn't  
24 even do that. Mike Hill's available; he works the same hours  
25 that we work. What is the harm in talking to Mike Hill, who

1 could clarify what we were told by the Acting Sergeant? I  
2 mean, that seemed like a reasonable thing for somebody to ask  
3 you to do.

4 Q. Before these issues arose, did you have any problems with  
5 your punctuality?

6 A. No. SID is a place that we don't -- we don't run a time  
7 clock, first of all. A lot of the luxury of Special  
8 Investigation is that there is a lot of freedom to that  
9 division. That being said, you know what's expected of you and  
10 when there are certain appointments that you must be at. I  
11 think anybody would agree that an employee that has punctuality  
12 problems, it follows them, those sorts of habits come up  
13 repeatedly. I've never been cited for punctuality problems.  
14 Before this or after this.

15 Q. Now, up to that point, had you ever had any problems with  
16 your performance?

17 A. No. Never.

18 Q. Did you receive performance evaluations?

19 A. Every year.

20 Q. And on those performance evaluations, is that where you  
21 can be -- problems with performance can be addressed?

22 A. That's where they are addressed.

23 Q. And had you ever had any problems cited to you about your  
24 performance?

25 A. Never before and never since.

1 Q. Now, I've been asking you these questions about Acting  
2 Sergeant, and I guess I didn't ask this question. Did you ever  
3 want to be the Acting Sergeant?

4 A. Sure.

5 Q. Why is that?

6 A. Oh, it's kind of fun to get to run the show and make the  
7 decisions. I don't know.

8 Q. Did you ever want to be a supervisor within SID?

9 A. I think, yes, when I -- you know, as you -- as you go on  
10 through your career and promote, that's your ultimate -- that's  
11 the next step, is the supervisor in SID. Absolutely.

12 Q. Okay. So did you ask Lieutenant Smith if you could talk  
13 to him about the punctuality memo?

14 A. I did.

15 Q. When did you ask?

16 A. Shortly after I received the punctuality memo.

17 Q. Did Lieutenant Smith agree to meet with you?

18 A. Yes, he did.

19 Q. When in relation to the time you asked him did you meet  
20 with Lieutenant Smith?

21 A. Within a couple of days.

22 Q. Did you tell Lieutenant Smith the reason why you wanted to  
23 meet him?

24 A. I don't know if I specifically told him when I made the  
25 meeting appointment.



1 Q. Okay. You don't remember?

2 A. I don't remember if I did.

3 Q. Where did you meet with -- Did you ultimately meet with  
4 him?

5 A. I did at his office at SID.

6 Q. Would you tell the jury about that meeting?

7 A. I went into his office and we closed the door, and I told  
8 Lieutenant Smith that I was feeling a bit stressed, having a  
9 hard time concentrating because I felt like this punctuality  
10 memo, you know, was -- was not factual and that, you know,  
11 Sergeant Hubbard was not being reasonable about it, and I felt  
12 that it was a simple thing that could be cleared up by talking  
13 to Detective Hill, and that I wanted to file an official EEOC  
14 Complaint on Sergeant Hubbard.

15 Q. So you used the words "EEOC Complaint"?

16 A. Yes.

17 Q. What did Lieutenant Smith say?

18 A. He said no, and he started talking to me about my  
19 performance.

20 Q. When you say your performance, what do you mean?

21 A. He started asking me about what had I done in ROP for the  
22 last four years. I felt like he was going off on a tangent,  
23 and I didn't understand why he was bringing that up on the day  
24 that I was trying to file a complaint about my Sergeant, and so  
25 I asked him, "Why are you bringing up my performance when

1 you've never brought up my performance before?"

2 Q. What did he say?

3 A. He said, "I haven't had a chance."

4 And I said, "You haven't had a chance to bring up my  
5 performance before now?"

6 And he said, "No."

7 And I said, "Look, I'm not here to talk about my  
8 performance. I need your help with the Complaint."

9 And he said again, "No."

10 And I said, "I don't think you can tell me no."

11 And he says, "Well, I'm telling you no."

12 Q. So what did you say?

13 A. He asked me -- The conversation digressed off a few  
14 tangents, and it's difficult to remember every detail, but he  
15 did ask me if I thought that every employee should be  
16 disciplined the same. And I answered him that I'm not a  
17 supervisor, which I wasn't at the time, I was just a detective,  
18 but I said, "Well, I think that every employee involved in the  
19 exact same incident should be disciplined the same."

20 And he said, "I disagree."

21 And I began to get the feeling that I wasn't going to  
22 get anywhere in the meeting, and so I stood up to go, and he  
23 raised his voice and he said, "Sit down. You're not  
24 dismissed." And he's never raised his voice to me before.

25 And I sat down because he leaned forward in his chair

1 as he said it. I sat down, and at this point I have both feet  
2 on the floor and I'm just looking at him, and I'm waiting. I  
3 don't know what's happening. I don't know what to do next.  
4 I'm just waiting because he told me "Sit down," I'm not  
5 dismissed.

6 And so a couple awkward seconds go by, and I'm  
7 slightly afraid because -- this is a new situation for me with  
8 him, and I'm a bit intimidated, admittedly, and --

9 Q. Why were you intimidated?

10 A. Oh, because, look, Rob is -- it's known Rob is set to be  
11 the next Commander, he's in line for that position at the time.  
12 Look, I'm feeling like my job is on the line and now I've made  
13 this man mad. He's angry at me. He -- I've already shown my  
14 card that I want to file this complaint on my Sergeant. It's  
15 made him unfavorable to me now. What's going to happen next?  
16 I don't know how to gauge this situation.

17 Q. So what did happen?

18 A. I said, "Is that everything?"

19 And he leaned back in his chair and he put his hands  
20 behind his head and he looked up at the ceiling and he took a  
21 breath in and he says, "Let me think."

22 And I sat waiting, and it seemed -- I'm sure it  
23 wasn't very long, but it seemed like forever, and he says, "I  
24 guess so."

25 And I got up and I went out the door, and he was

1 right behind me and went into -- he went into the Captain's  
2 office at that point.

3 Q. Before he got up to -- and you walked out of the office,  
4 did he say anything else to you about the situation?

5 A. Yes. He said to me, "I sure hope I have some loyalty  
6 coming my way."

7 Q. Do you know what he meant by that?

8 A. To me, that means --

9 MS. WILLIAMS: Objection, Your Honor. Calls for  
10 speculation.

11 THE COURT: Sustained.

12 Q. (By Mr. Villa) Well, not necessarily what you thought it  
13 meant, but did you have any idea -- when he told it to you,  
14 did he explain what he meant?

15 A. He didn't explain what he meant.

16 Q. Okay. That's fair. And then you saw him walk into -- did  
17 you say the Captain's office?

18 A. Yes.

19 Q. And who was the Captain?

20 A. Captain Hudson.

21 Q. What's Captain Hudson's first name?

22 A. Joseph.

23 Q. Now, you had talked a minute ago about your performance  
24 evaluations. Do you remember that?

25 A. Yes.

1 MR. VILLA: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. Ms. Welch I'm showing you what I've marked for  
4 identification as Plaintiff's Exhibit 62. Is that one of your  
5 performance evaluations.

6 A. Yes, I believe so.

7 Q. Is that the form that they came in when they were done on  
8 an annual basis?

9 A. Yes.

10 Q. And from what year was that performance evaluation?

11 A. It appears to be from 2009.

12 Q. Does it have a date range on the front that it indicates?

13 A. From 3/31/08 to 4/30/09.

14 Q. And did you sign that performance evaluation?

15 A. It has my name on it, but this actually is not my  
16 signature.

17 Q. Okay. Well, I'll talk to you about that in a little bit.  
18 Is the performance evaluation also signed by Sergeant Hubbard?

19 A. Yes.

20 Q. Okay.

21 MR. VILLA: Your Honor, I would move to admit  
22 Plaintiff's 62.

23 MS. WILLIAMS: I understand that this may have been  
24 stipulated.

25 MR. VILLA: Okay.

1 MS. WILLIAMS: The two exhibits you've moved, we've  
2 stipulated to.

3 MR. VILLA: It sounds like there's no objection.

4 THE COURT: I don't have it one way or the other, but  
5 at the same time are you stipulating, Ms. Williams?

6 MS. WILLIAMS: Yes, Your Honor.

7 THE COURT: Okay. It's admitted without objection.

8 (Plaintiff's Exhibit 62 admitted into evidence.)

9 MR. VILLA: May I publish?

10 THE COURT: You may.

11 Q. (By Mr. Villa) So, Ms. Welch, this performance  
12 evaluation of yours shows here on the left side four different  
13 expectations. Are those the expectations that you saw in your  
14 previous performance evaluations as well as this one?

15 A. Yes.

16 Q. And it indicates here that they were all met?

17 A. That's correct.

18 Q. And when you did this performance evaluation, did anybody  
19 bring to your attention that there were problems with your  
20 performance?

21 A. No.

22 Q. Now, you said that on the second page the signature  
23 there -- here's Sergeant Hubbard's signature and then there's a  
24 signature there. That's not your signature?

25 A. That's not my signature.

1 Q. Okay. Do you know how it was that it got signed by  
2 somebody else?

3 A. I think maybe the Sergeant got behind and just if -- it  
4 looks like the same date almost.

5 MS. WILLIAMS: Objection, Your Honor. Calls for  
6 speculation.

7 THE COURT: Sustained.

8 Q. (By Mr. Villa) You don't know what happened?

9 A. I don't.

10 Q. Do you remember receiving this employment evaluation?

11 A. I don't remember receiving it, no. It's in my file,  
12 though, in my personnel file.

13 Q. Now, after the meeting with Lieutenant Smith, what did you  
14 do?

15 A. I left the building to get a breather and try to calm  
16 down, and then I met Detective Hill for lunch.

17 Q. And what happened during lunch?

18 A. I had to walk into the same restaurant as Rob Smith and  
19 the Commander.

20 Q. So what did you do?

21 A. I was not expecting to see him when I walked in the  
22 building, and I turned around and walked straight back out, and  
23 I probably had quite a reaction to seeing Rob Smith so soon  
24 after that meeting, and, admittedly, probably didn't look so  
25 good to the Commander at the time for me to walk in and walk

1 right back out. He wasn't privy to how that meeting made me  
2 feel with Rob Smith.

3 Q. And then after that point in time, did you ever meet with  
4 Commander Hudson?

5 A. Yes, I asked him for a meeting the following day, I  
6 believe.

7 Q. Tell the jury what happened during that meeting.

8 A. I met with Captain Hudson, and he was very open to hearing  
9 what I had to say, although he told me right away that I  
10 shouldn't file my EEOC. He told me that I wouldn't win,  
11 although he told me that he would deny telling me that if he  
12 was asked later. He said that he has seen good EEOC cases not  
13 win, and he told me that he had a suggestion for me for how I  
14 could fix the situation with Lieutenant Smith.

15 Q. What was the suggestion?

16 A. Well, he told me that I could fall on my sword and that I  
17 go tell Lieutenant Smith that he was right and I was wrong, and  
18 that that would probably make Lieutenant Smith feel better, and  
19 that, you know, he said that Lieutenant Smith was really good  
20 at meetings when he had them rehearsed. And he said when they  
21 don't go the way that Rob Smith plans for them to go, that he  
22 doesn't do well with situations like that.

23 Captain Hudson didn't tell me that he --

24 MS. WILLIAMS: Your Honor, this is all hearsay, and I  
25 object.



1 THE COURT: I will sustain that. Mr. Villa, this is  
2 a little bit beyond the scope of the question asked.

3 MR. VILLA: Sure, as to that, Your Honor, I can  
4 certainly break it up with questions.

5 THE COURT: Would you please.

6 MR. VILLA: You're not ruling necessarily on the  
7 hearsay, were you? These are statements by Captain Hudson.

8 THE COURT: Well, just a moment.

9 Okay. It's hearsay, and so I'll sustain it insofar  
10 as it is.

11 But, Mr. Villa, Ms. Williams, would you please  
12 approach.

13 (Bench conference on the record.)

14 MR. VILLA: So, Your Honor, if I may. This goes  
15 along with the three-part test for the Tenth Circuit. Captain  
16 Hudson is a supervisor. He's one of the people integrally  
17 involved in the retaliation claims, and so his statements, I  
18 think, meet the party opponent exception. Certainly as to the  
19 narrative, I can break these up a little more with questions.

20 THE COURT: Yeah. I've been pretty flexible about  
21 allowing her to testify because this goes to her view and  
22 interpretation about what she perceives or is experiencing, and  
23 it all goes to what she reasonably believed about an  
24 environment and how she's being treated. So I've been flexible  
25 about it. But she'll go beyond, I think, the scope of the

1 question, so if you'll just steer that a little closer.

2 MR. VILLA: Sure. Absolutely.

3 THE COURT: That's my concern. As to the hearsay  
4 statement, so this is the trickier part about this because  
5 she -- he is the supervisor at the time. It's a conversation  
6 she is having with the supervisor. Correct?

7 MR. VILLA: Yes, about filing an EEOC Complaint and  
8 her meeting with Lieutenant Smith.

9 MS. WILLIAMS: Your Honor, it has to be an  
10 admission. It can't just be everything that someone said. It  
11 has to be an admission of an element that they have to prove.  
12 It doesn't mean that they can say anything that anyone in a  
13 supervisory capacity ever spoke.

14 THE COURT: Well, and see, I read the rule to be as  
15 to statements, not just to admissions. So I can look at the  
16 rule again.

17 MR. VILLA: You know, the last part of that  
18 three-part test is that the statement concerns a matter within  
19 the scope of the declarant's employment. So these statements  
20 by Captain Hudson are within the scope of his employment as the  
21 supervisor.

22 THE COURT: So I understand it used to be that it was  
23 an admission. The rule is much broader now, allowing for  
24 statements.

25 Ms. Williams.

1 MS. WILLIAMS: I don't think it can be any -- This  
2 witness -- Hudson will be here, and any statement uttered by a  
3 supervisor cannot be in as a back door to having that person  
4 testify. That can't be the scope of the rule even though it's  
5 been loosened up some from being an admission, which is, I  
6 think -- plaintiffs might have perceived as too limiting. It  
7 still doesn't mean that anything the person said that doesn't  
8 have to do with their employment is now admissible because she  
9 heard it.

10 THE COURT: Well, but I think that's the three-part  
11 test.

12 MS. WILLIAMS: Yes.

13 THE COURT: As long as it meets the three parts, it  
14 wouldn't be just any statement, and so I see this as being one  
15 of the three parts of the test. It's within the course of the  
16 employment, it was made by somebody who is certainly in the  
17 chain of her command.

18 But my question to you, Mr. Villa, is that the claims  
19 are also as to what she experienced from coworkers. So that's  
20 where I'm a little bit more broad in my interpretation of how  
21 to apply this rule. So that's where I am.

22 So I'll let you continue to proceed with this  
23 questioning, but we may have to deal with them one at a time if  
24 you'd like to do it that way, Ms. Williams.

25 MS. WILLIAMS: We'll stay on top of it.

1 THE COURT: All right. Thanks.

2 (Open court.)

3 Q. (By Mr. Villa) So, Ms. Welch, after Captain Hudson told  
4 you these things that you just testified about to the jury,  
5 what did you do?

6 A. I got up to leave the office.

7 Q. Okay. And I was remiss in asking you. Do you remember  
8 the date that you met with Captain Hudson?

9 A. At the end of July, 2009.

10 Q. All right. Now, before that time but after you received  
11 the punctuality memo, was there an issue with Sergeant Hubbard  
12 and him assigning you warrant packets?

13 A. Yes.

14 Q. Okay. Tell the jury, what's a warrant packet?

15 A. From time to time SID would do what's called a warrant  
16 roundup, and we'd have a stack of felon -- felony warrants, and  
17 they would give you a stack of people that had outstanding  
18 felony warrants, and we would try to go pick those people up  
19 and arrest them for these outstanding felony warrants.

20 So Sergeant Hubbard had given two of my fellow  
21 detectives one packet together and he gave me a packet alone,  
22 and I said, "You want me to go look for these guys by myself?"  
23 And he goes, "Let me know if you need anything."

24 Q. Let me ask you this. When he gave it to you alone, how  
25 did he convey to you that you were doing it alone as opposed to

1 with a partner?

2 A. We're all in the office, and he says, "This one's for you  
3 guys," and he hands them one packet, and he says, "This one's  
4 for you." He hands me one packet by myself.

5 Q. And did this occur after you had the meeting with  
6 Lieutenant Smith?

7 A. Yes.

8 Q. Had Sergeant Hubbard ever previously requested you do a  
9 warrant without a partner or backup?

10 A. No.

11 Q. How did you feel when he asked you to do that?

12 A. I felt like he's crazy.

13 Q. Why is that?

14 A. It's absurd. You don't send somebody to pick up a felon  
15 by yourself. Nobody -- Nobody arrests somebody with a felony  
16 warrant by themselves. These people are often armed. That is  
17 not a reasonable request for a detective to go and make an  
18 arrest of somebody with a felony warrant, especially of the  
19 caliber that we would be searching for. That's dangerous.  
20 That's putting my life in danger.

21 MS. WILLIAMS: Objection, Your Honor. This is not  
22 responsive.

23 THE COURT: Mr. Villa.

24 MR. VILLA: I think that's responsive to the question  
25 about how she felt about it.

1 THE COURT: All right. You may continue.

2 Q. (By Mr. Villa) Well, and I think, Ms. Welch, you  
3 answered the question now. So let me ask you now about a  
4 little bit later in time, shortly after your meeting with  
5 Captain Hudson. In early August, did you have an issue  
6 related to calling for backup?

7 A. Yes, I did.

8 Q. Okay. Can you tell the jury about that.

9 A. I received a call from an informant that told me one of my  
10 suspects that I'd been looking for for a very long time was at  
11 an apartment complex off of Montgomery.

12 Q. He was an informant?

13 A. An informant is somebody who you may ask for help that's  
14 willing to -- say you're looking for somebody and -- they're a  
15 willing -- a willing party -- that's willing to help you out on  
16 a case that you might be working.

17 Q. So like a civilian, not a police officer?

18 A. They're civilian, yes.

19 Q. Okay. So the informant notifies you about a suspect. And  
20 what do you do?

21 A. The stalking unit had been looking for this person who was  
22 threatening the life of a female juvenile. We thought the  
23 person was out of state. We lost track of him for a very long  
24 time. The informant calls me and says, "He's here right now."

25 I run up there to make sure we have a positive

1 identification on this person. In fact, it is my suspect. I  
2 get on --

3 Q. When you positively identify the suspect, what do you do?

4 A. I get on ROP air and I say, "I need -- I need backup. I'm  
5 at this apartment complex on Montgomery. Can I get somebody to  
6 start?"

7 Q. And did anyone respond?

8 A. Sergeant Hubbard acknowledged my transmission on the  
9 radio, and I got nobody else to say that they were on the way.

10 Q. Now, was that unusual?

11 A. Yeah, it was unusual.

12 Q. Had that happened to you before this issue came up with  
13 the punctuality memo?

14 A. No.

15 Q. How long did it take for somebody to respond?

16 A. I waited an approximate ten minutes. I started -- I  
17 actually checked on Northeast air to see if I could get marked  
18 units.

19 Q. When you say you checked on Northeast air to get units,  
20 what does that mean?

21 A. It means I switched over to the air that the uniform guys  
22 wear or that the uniform guys use. The units were all busy on  
23 calls.

24 Q. So you were calling for --

25 A. Anybody.

1 Q. -- a marked unit because no one from the ROP team was  
2 responding?

3 A. Correct.

4 Q. All right. So then what happened after that?

5 A. I got on my phone and I called Danny Garcia, who's an ATF  
6 task force guy. He's not always on ROP air because he has an  
7 ancillary duty. He answers his phone. He says, "Hey, I can  
8 start, but I'm from a long ways off. I'm at Sunport and I-25."

9 Q. Now, let's stop there because you said a bunch of things.  
10 You told Danny Garcia. Was he a detective in the ROP unit?

11 A. Yes.

12 Q. You said he's not always on ROP air?

13 A. That's correct, because he's got -- he's got sort of a  
14 side job at the same time. He's an ATF task force liaison.

15 Q. What is ATF?

16 A. That's -- He's assigned to the ATF, which is a federal --

17 Q. Is it Alcohol, Tobacco and Firearms?

18 A. That's correct.

19 Q. Okay. So what you're saying is sometimes he would be  
20 working with them and not be on the ROP air?

21 A. Correct.

22 Q. Okay. And why did you call -- I mean, other than that,  
23 was there any other reason why you called Danny Garcia?

24 A. I needed help. I didn't -- I was about to go out with  
25 this suspect by myself if I couldn't get anybody else to back



1 me up.

2 Q. Did Danny Garcia ultimately come?

3 A. He did.

4 Q. How long did it take him? Do you remember?

5 A. From Sunport and I-25 to Montgomery, I don't know. I'm  
6 estimating he was hurrying for me. It probably took him six to  
7 eight minutes.

8 Q. Within that time period, did anybody from the rest of the  
9 ROP team show up?

10 A. No.

11 Q. Were you able to apprehend the suspect?

12 A. Yes, I was.

13 Q. Were you concerned about the fact that nobody else from  
14 the ROP team showed up to back you up?

15 A. Yes.

16 MS. WILLIAMS: Objection. Leading, Your Honor.

17 THE COURT: Sustained.

18 Q. (By Mr. Villa) Okay. How did you feel about no one from  
19 the ROP team coming to back you up?

20 A. I felt awful.

21 Q. Why?

22 A. Because when you need help from your team and you can't  
23 get anybody to come, it's an empty feeling.

24 Q. Had you had that feeling before these issues came up with  
25 the punctuality memo and your meetings with the Lieutenant and

1 Captain?

2 A. No.

3 Q. Now, a little bit later in the month of August of 2009,  
4 was there a meeting with members of the ROP team and you?

5 A. Can you repeat that?

6 Q. Sure. A bit later in August, after this incident, was  
7 there a meeting with members of the ROP team and yourself?

8 A. Yes, there was.

9 Q. And who was in that meeting?

10 A. J.R. Potter and Kevin Gagne.

11 Q. Anybody else?

12 A. Mike Hill.

13 Q. Okay. How was it that that meeting got called?

14 A. J.R. Potter called me on the phone and asked me to meet  
15 them back at SID.

16 Q. Did you?

17 A. I did.

18 Q. What happened at that meeting?

19 A. We sat in the office, in the Sergeant's office and --

20 Q. Was the Sergeant there?

21 A. No.

22 Q. Okay. You were just using his office?

23 A. Correct.

24 Q. What was J.R. Potter and Kevin Gagne's demeanor like?

25 A. It was -- I don't know how to describe it. It was very

1 inquisitive.

2 Q. How about Detective Hill?

3 A. Detective Hill didn't know what was going on, just like  
4 me. We were in the dark.

5 Q. Okay. What did -- What was said during the meeting?

6 A. Detective Potter and Detective Gagne were asking me what  
7 was going on with me.

8 Q. What did you say?

9 A. And I -- I --

10 MS. WILLIAMS: Objection, Your Honor. This is  
11 hearsay.

12 THE COURT: Okay. Overruled.

13 Q. (By Mr. Villa) What did you say?

14 A. I didn't know what they were talking about. I said, "I'm  
15 not sure what you guys mean."

16 And they said, "Well, you didn't say good morning  
17 back the other morning."

18 And I said, "Well, I'm sorry. I didn't hear you say  
19 good morning. I'm not a rude person. If I would have heard  
20 you say good morning, I would have said good morning back." It  
21 seemed a little odd to me.

22 But they said, "Well, you seem different lately."  
23 And I -- I was different. I was, you know, considering filing  
24 the Complaint, and --

25 Q. Now, at this point in time, you hadn't filed the

1 Complaint, right?

2 A. No.

3 Q. You had just talked to the Lieutenant and Captain?

4 A. Uh-huh.

5 Q. Okay. So they told you "You seem different."

6 And then what happened next?

7 A. I asked them, "Look, guys, let's just -- let's just work.  
8 I can't talk to you about these things. I'm sorry if I've been  
9 seeming that way, but we just need to do our jobs, we just need  
10 to go to work. Okay? And let this other stuff stay out of our  
11 jobs."

12 Q. How did they react?

13 A. They were angry.

14 Q. How do you know they were angry?

15 A. Oh, they were angry. Their demeanors, they started  
16 attacking, "Well, if you're not going to tell us, then we're  
17 done," is what they said to me.

18 Q. And not telling them, why didn't you want to tell them?

19 A. Because it -- it's private. It's my private business.  
20 It's not team business. I have to keep those things to myself.  
21 I have to be confidential. I was advised to stay confidential.

22 Q. Okay. At any point during that meeting, were you asked  
23 about -- Well, let me ask you this. Did Detective Potter or  
24 Detective Gagne ask you anything else in that meeting?

25 A. Oh, Detective Potter made reference to "How do I know

1 you're going to back me up?"

2 MS. WILLIAMS: Objection, Your Honor. Hearsay.

3 THE COURT: Well, I haven't heard -- It's a question.  
4 Overruled. Go ahead.

5 Q. (By Mr. Villa) I'm sorry. What did Detective Potter ask  
6 you?

7 A. He asked me "How do I know if you're going to back me up?"

8 Q. And what did you say?

9 A. I was offended by the question. I would never not back up  
10 a police officer. Ever. For any reason.

11 Q. How long had you known Detective Potter at that point?

12 A. Since 2001.

13 Q. And at this point in time and during this meeting, he was  
14 part of the ROP team?

15 A. Correct.

16 Q. Okay. Had he ever asked you before questions about being  
17 able to back him up?

18 A. No.

19 Q. Okay. After that meeting, what happened next?

20 A. They stormed out of the -- out of the office and slammed  
21 the door and cussed and left, and I'm sort of left wondering  
22 what just happened, and that was the end of the meeting.

23 Q. And you had not -- Well, let me ask you this. At that  
24 point in time, had you filed any EEOC Complaint?

25 A. No.

1 Q. After that, did you?

2 A. I did.

3 Q. And when did you file the EEOC Complaint?

4 A. In August, I believe, of 2009.

5 Q. Why did you file it?

6 A. I filed it because I needed help.

7 Q. Let me ask you this. In your EEOC Complaint, what did you  
8 put in there?

9 A. In my EEOC Complaint, I outlined all the reasons that I  
10 was being treated differently than everybody else in the ROP  
11 team and in my chain of command. There had been numerous  
12 instances of egregious policy violations by the guys that were  
13 just let go and undocumented, but then I have a so-called  
14 punctuality memo which I dispute and I'm called out and put a  
15 written notice in my employee file. It just -- I could see it  
16 was the beginning of discipline coming for me for somebody that  
17 had it out for me because I'm a female. I mean --

18 Q. Let me ask you this question. Did you put in the EEOC  
19 Complaint a hostile work environment?

20 A. Yes, I did.

21 Q. Did you talk in there specifically about the sexual  
22 harassment that you've testified about earlier from Rob Smith?

23 A. No, I did not.

24 MS. WILLIAMS: Objection, Your Honor, leading.

25 THE COURT: Sustained.

1 Q. (By Mr. Villa) Okay. What, if anything, did you put in  
2 the EEOC Complaint about the testimony you gave us earlier  
3 about the comments and statements that Robert Smith made to  
4 you over the years?

5 A. I didn't put those in there.

6 Q. And why not?

7 A. Because I had already gone through every level of my chain  
8 of command and tried to get relief, and I got no help with even  
9 filing my Complaint from my Lieutenant, my Commander. Nobody  
10 helped me. And so why would I now trust that anybody at APD  
11 would help me with anything like that. I already had made my  
12 Lieutenant angry at me just for complaining about a Sergeant's  
13 behavior. Now I'm going to complain about the Lieutenant  
14 sexually harassing me? No way. No way am I going to -- I'm  
15 for sure done with my job and my career if I do that.

16 Q. Did you have any other concerns about making those claims  
17 against Mr. Smith?

18 A. Yes, I did. I feared for my safety. I had already not  
19 been able to get backup. I'm exposed to danger by the Sergeant  
20 himself. I don't know how far up that order is possibly given  
21 up my chain of command to do things like that to me. Look, I'm  
22 scared at that point.

23 Q. Now, when you filed your Complaint with the EEOC, that was  
24 the federal EEOC, right?

25 A. Yes, and that's why I chose to go outside of my department

1 and outside of my City government, is because I didn't trust  
2 anybody to do the right thing.

3 Q. Did you also take that Complaint to the Internal Affairs?

4 A. Yes.

5 Q. Okay. Tell us about that. How did you do that?

6 A. I took a copy of the Complaint that I dropped off to the  
7 federal EEOC office and I took it to the IA office, to  
8 Lieutenant West.

9 Q. And who is Lieutenant West?

10 A. Lieutenant Doug West.

11 Q. Why did you take him a copy of the Complaint?

12 A. I believe the EEOC office instructed me to do so.

13 Q. Okay. What did Lieutenant Doug West tell you he would do  
14 with your Complaint?

15 A. He told me that he would keep it confidential; that he  
16 would only share it with the Chief of Police Ray Schultz.

17 Q. And what was the date that you filed your Complaint with  
18 the EEOC and -- Well, let's start there. With federal EEOC,  
19 what was the date you filed your Complaint?

20 A. I believe it was August 24th, 2009.

21 Q. And when did you give it to Lieutenant Doug West?

22 A. I think it was the same day.

23 Q. And you said you'd outlined your Complaint. How long was  
24 your Complaint?

25 A. Sixteen pages, typed.



1 Q. Now, what about with the Complaint with the EEOC, the  
2 federal EEOC on August 24th, 2009, why not include the things  
3 in there about Mr. Smith and the performance evaluation and  
4 that kind of stuff?

5 A. To the federal EEOC?

6 Q. Yes.

7 A. I didn't have any direction. I didn't know what I was  
8 doing at the time. I've never filed an EEOC before. I didn't  
9 trust anybody at the time. And I was still -- as I said, I was  
10 scared. I just didn't feel comfortable. I was afraid to do  
11 it.

12 Q. This morning you testified that you knew Mr. Smith's wife.

13 A. Yes.

14 Q. And I think you testified this morning it's because she  
15 did some work with the Department.

16 A. Yes.

17 Q. Okay. Did that have a factor in your decision whether or  
18 not to report his harassment?

19 A. Yes, it did.

20 Q. Tell the jury about that.

21 A. As a woman, you know, hearing about your husband behaving  
22 that way at work, it's -- that is going to have an effect on a  
23 marriage and on a woman's self-esteem. I didn't necessarily  
24 want to put Shannon through that. I didn't want to -- Look, I  
25 didn't want to ruin Rob Smith. It wasn't my intention of -- I

1 just wanted to do my job and to keep my job that I loved and  
2 for him to knock it off. And for somebody to hold them  
3 accountable the way that they should be held accountable for  
4 behaving the way that they were behaving.

5 And, you know, I did have a degree of guilt about  
6 doing that to Shannon. I mean, that's not something that is an  
7 easy thing to do to another woman, is to, "Hey, your husband is  
8 doing this behind your back at work -- while he's at work."

9 Q. Did you ultimately tell the federal EEOC about the exhibit  
10 that we showed you earlier, the Fitness Assessment?

11 A. Yes, I did.

12 Q. As well as the note that you read this morning to the  
13 jury?

14 A. Yes.

15 Q. So eventually you told the federal EEOC?

16 A. Yes.

17 Q. Okay. After August 24th, you filed the EEOC Complaint,  
18 you gave it to Lieutenant Doug West and Internal Affairs. Did  
19 you then go back to continue working at ROP?

20 A. Yes, I did.

21 Q. Okay. Do you know one way or another whether your  
22 Complaint was kept confidential after you gave it to Doug West?

23 A. It was not.

24 Q. How do you know?

25 A. Because within two days of giving the Complaint to Doug

1 West I returned to work and I was immediately asked about  
2 details in my Complaint.

3 Q. Who asked you about details?

4 A. Maureen O'Brien had -- the Vice office was right --

5 MS. WILLIAMS: Objection, Your Honor, hearsay.

6 MR. VILLA: Well, it's just the fact that she asked  
7 about it. That's as far as I need to go, Your Honor.

8 THE COURT: Okay. Otherwise sustained.

9 Q. (By Mr. Villa) So without getting into Maureen O'Brien's  
10 statements, she asked you about it?

11 A. She did.

12 Q. And Maureen O'Brien, who was that?

13 A. She was the only other female detective in Special  
14 Investigations.

15 Q. Was she in ROP?

16 A. She was in Vice.

17 Q. In Vice. Okay. Did anybody else ask you about the  
18 Complaint?

19 A. Yes.

20 Q. Who was that?

21 A. People in Intel, which is also in Special Investigations.

22 Q. Intel is Intelligence?

23 A. Yes.

24 Q. Okay. Anybody else?

25 A. It was on a blog.

1 Q. Okay. On an Internet blog?

2 A. Yes.

3 Q. Now, after you filed the Complaint, did something happen  
4 to Sergeant Hubbard and Lieutenant Smith?

5 A. It did.

6 Q. What happened?

7 A. They were removed?

8 Q. And was somebody made the Acting Sergeant in Sergeant  
9 Hubbard's place?

10 A. Kevin Gagne.

11 Q. Kevin Gagne was?

12 A. (Nodded head.)

13 Q. Did you name Kevin Gagne in your Complaint?

14 A. Yes, I did.

15 Q. When Kevin Gagne -- How did you find out that Kevin Gagne  
16 became Acting Sergeant?

17 A. He announced over ROP air that he was Acting Sergeant.

18 Q. Okay. Was somebody else brought over in Kevin Gagne's  
19 place during this period of time that Sergeant Hubbard left?

20 A. Yes.

21 Q. Who was that?

22 A. Lou Heckroth.

23 Q. And you testified about Lou Heckroth earlier this morning.  
24 Who was he?

25 A. He was one of the original members of ROP when I first

1 came to ROP in 2004.

2 Q. Okay. And was there another Lieutenant that was assigned  
3 to oversee SID while Lieutenant Smith was moved?

4 A. Yes. Lieutenant Shawn O'Connell.

5 Q. Okay. Did you speak to Lieutenant O'Connell about  
6 Heckroth being brought over to the ROP team?

7 A. I spoke with the union president about Sergeant Heckroth  
8 being brought over.

9 Q. Okay. What did you tell the union president?

10 A. I told him that I was concerned about Sergeant Heckroth  
11 being left as Sergeant in the interim; that he was part of the  
12 original ROP team and I was concerned that there may be a bias  
13 there.

14 Q. Okay. Now, after this happened, again, we're talking late  
15 August, did you have a conversation with Sergeant John  
16 Sullivan?

17 A. Yes.

18 Q. And you testified about him a little bit earlier, that  
19 Sergeant John Sullivan was in charge of Burglary?

20 A. Correct.

21 Q. How did you know Sergeant Sullivan?

22 A. I just had known him through my time at APD.

23 Q. Okay.

24 A. Acquaintance.

25 Q. This is something I don't think I've brought up yet. In

1 ROP, did you have a liaison with a particular other unit within  
2 the Department?

3 A. Yes, Burglary.

4 Q. Okay. Explain what that means, that you had this liaison?

5 A. So each ROP detective was assigned a liaison unit sort of  
6 to improve communications throughout the Department. My  
7 liaison unit was Burglary, so at least once a week I would  
8 check in with the Burglary unit and see if they had any  
9 suspects that they thought were active in burglarizing  
10 commercial buildings or residential addresses that they were  
11 concerned about or any active burglars that they needed help in  
12 apprehending from -- with -- from the ROP team.

13 Q. So had you worked with Sergeant Sullivan before in your  
14 capacity as a liaison?

15 A. Yes, regularly.

16 Q. Did Sergeant Sullivan know what was going on at that point  
17 in time with you filing the Complaint?

18 A. Not that I --

19 MS. WILLIAMS: Objection, Your Honor. Calls for  
20 speculation.

21 THE COURT: Sustained.

22 Q. (By Mr. Villa) Okay. Did Sergeant Sullivan say anything  
23 to you when you had a conversation with him after you had  
24 learned about your Complaint being leaked?

25 A. He stated that he had had a conversation with Sergeant

1 Heckroth about my Complaint.

2 Q. Okay. What's the next thing that happened after that?

3 Well, let me ask you this. Did you ever have a conversation  
4 with Doug West, who you had taken your Complaint to at Internal  
5 Affairs, about the Complaint getting out?

6 A. Yes, I did.

7 Q. And tell me about that.

8 A. I asked to speak with him. Told him that I was concerned  
9 about the details being leaked; that it was causing me issues  
10 at work. He asked me what would help with what was going on,  
11 and I told him, you know, that, you know, that he had given me  
12 his word that only Chief Schultz would get that information and  
13 that that hadn't been the case.

14 Q. Did he ever explain how that happened?

15 A. No, he did not.

16 Q. Did you talk to him at all about whether you should stay  
17 or leave ROP?

18 A. Yes. I actually offered, you know, as a way to sort of  
19 keep the peace because it was getting very awkward for me, that  
20 I would go over to Intel until his investigation was done.

21 Q. That's Intelligence, right?

22 A. Yes, in the Intelligence unit. It's still in my division.  
23 You know, I was trying every effort to, Look, I understood the  
24 impact that this was having on my ROP team, and I -- I felt, in  
25 a way, you know, responsible for this, and I was trying to,

1 like I said, help keep the peace at the time, but he wouldn't  
2 let me go. He made me stay there.

3 Q. Okay. After that point in time, what happened next?

4 A. We continued to work. I had to take a week off right  
5 then. And I was uncomfortable being alone with Sergeant  
6 Heckroth. Potter and Gagne were the only ones working, and I  
7 was not comfortable being alone with those three. I took that  
8 week off of work until the rest of my team came back so that I  
9 was sure I had some backup if I needed it.

10 Q. When you say the rest of the team came back, what other  
11 members are you talking about?

12 A. Mike Hill, Danny Garcia. The guys I knew I could count on  
13 if I needed them.

14 Q. And do you remember when that week off was?

15 A. It was right -- right when Sergeant Heckroth assumed the  
16 Sergeant role.

17 Q. And do you remember the exact week or the time?

18 A. Would have been right at the end of August or beginning of  
19 September in 2009.

20 Q. Okay. Now, at some point in time did -- Do you know  
21 whether Lieutenant Doug West conducted an Internal Affairs  
22 investigation into your Complaint?

23 A. He said he did. I don't know the details of any of it.

24 Q. Did you ever do an interview with him?

25 A. I did do an interview with him.



1 Q. Okay. And at any time in the month of December --  
2 September, I know that Sergeant Hubbard was gone. Did you  
3 cross paths with him?

4 A. Yes, I did. I ran into him at the main police station.

5 Q. What happened then?

6 A. Several ROP members and I had to go pick up new phones,  
7 updated phones, and he shook everybody's hand and greeted  
8 everybody, completely disregarded me, which was telling of his  
9 feelings of me.

10 Q. Did he shake your hand?

11 A. No.

12 Q. Did he say hello to you?

13 A. No.

14 Q. Okay. At some point in time, did Mr. Hubbard come back?

15 A. He did.

16 Q. Do you remember when that was?

17 A. November.

18 Q. Okay. So that this occurred in September where he didn't  
19 shake your hand. He comes back in November?

20 A. Correct.

21 Q. During that period of time, who was your supervisor that  
22 you reported to?

23 A. Lou Heckroth.

24 Q. Were you ever told to report to anyone else who was a  
25 supervisor?

1 A. No.

2 Q. Around the time that you had this incident with Sergeant  
3 Hubbard where he wouldn't shake your hand, did anything happen  
4 at your office at ROP, or I guess your cubicle?

5 A. Other than finding coffee or soda sprayed all over my  
6 cubicle.

7 Q. Okay. Tell the jury about that.

8 A. I came back from being gone from my cubicle and I -- there  
9 was brown something, coffee or soda it looked like, sprayed all  
10 over the wall of my cubicle.

11 Q. Had that been there since the last time that you were  
12 there?

13 A. No.

14 Q. I take it you didn't see how that happened?

15 A. No.

16 Q. Did you know a detective by the name of Brett  
17 Lampiris-Tremba?

18 A. Yes, I did.

19 Q. Did you have a conversation with him at some point in time  
20 in October in the parking lot?

21 A. Yes.

22 Q. Will you tell the jury about that.

23 MS. WILLIAMS: Objection, Your Honor. Hearsay.

24 THE COURT: Okay. Why don't you come on forward.

25 (Bench conference on the record.)

1 MR. VILLA: Your Honor, this is similar to the Kevin  
2 Gagne statement. Detective Brett Lampiris-Tremba was an SID  
3 detective who Captain Hudson told that somebody in ROP was  
4 going to be disciplined out of the unit, and so the statement  
5 is from Captain Hudson to Brett Lampiris-Tremba, and  
6 Lampiris-Tremba tells this to Detective Welch.

7 MS. WILLIAMS: It's triple hearsay. It's by a  
8 coworker. It's not admissible.

9 MR. VILLA: I think it's just double hearsay. It's  
10 two layers. Hudson to Lampiris-Tremba and there's  
11 Lampiris-Tremba to Welch, and it's the same as it is with John  
12 Sullivan. John --

13 MS. WILLIAMS: And there's this other layer of  
14 hearsay where he then says, "I think it's going to be you."

15 THE COURT: Well, that's part of what I wanted to  
16 visit with you. What do you expect she's going to say as a  
17 result of this?

18 MR. VILLA: Brett Lampiris-Tremba found her in the  
19 parking lot and told her that he just had a meeting with  
20 Captain Hudson about leaving SID, and Captain Hudson told him  
21 to sit tight because somebody's going to be disciplined out of  
22 the unit.

23 MS. WILLIAMS: And he assumed -- made the leap that  
24 it was her. That is not something that Hubbard told him.

25 MR. VILLA: Hudson.

1 MS. WILLIAMS: Hudson.

2 THE COURT: This is probably an example of where it  
3 becomes a little attenuated, so --

4 MR. VILLA: Perhaps his conclusion "that it's you"  
5 might be subject to the attenuation, but I think the statement  
6 before that I think is the same analysis that you undertook  
7 with Kevin Gagne.

8 THE COURT: Okay. That --

9 MS. WILLIAMS: This is part of our lay witness brief,  
10 too.

11 THE COURT: Tell me again what the statement is.

12 MR. VILLA: "I just had a meeting with Captain Hudson  
13 about leaving SID. He told me to stay put, someone's going to  
14 be disciplined out of the unit." And we can stop it there if  
15 you think that the next statement "I think that it's you" is  
16 too attenuated.

17 THE COURT: Well, it leaves an unclosed inference.

18 MR. VILLA: I think that's what the jury's job is, to  
19 you know why did Mr. Lampiris-Tremba tell Detective Welch, and  
20 that's for the closing argument.

21 THE COURT: Well, I disagree. I think it gets  
22 into -- I'm going to limit it, but if I limit it, it becomes  
23 almost irrelevant, so I'm going to exclude it. That particular  
24 statement will be excluded. All right. That's my ruling.

25 (Open court.)

1 THE COURT: I made a ruling under 401 to the extent  
2 it is to the statement relevant, I'll also articulate that  
3 applying 403, would rule that it is insufficiently probative  
4 and therefore will not be admitted.

5 All right, counsel.

6 Q. (By Mr. Villa) Ms. Welch, let me ask you about -- Were  
7 you notified when Sergeant Hubbard was coming back to ROP?

8 A. I was.

9 Q. And is that also true with Lieutenant Smith?

10 A. Yes.

11 Q. How were you notified?

12 A. Lieutenant O'Connell notified me.

13 Q. Okay. What, if anything, did you tell Lieutenant  
14 O'Connell when he notified you that they were coming back?

15 A. I asked him if Chief Schultz was aware that there was an  
16 ongoing EEOC, and he stated that he was aware.

17 Q. Okay. Were you -- Can you say whether the EEOC  
18 investigation was still ongoing at that time?

19 A. It was still ongoing.

20 Q. Okay. Do you remember the date that Sergeant Hubbard came  
21 back?

22 A. I don't know the exact date. It was in November.

23 Q. Okay. And at that point in time the EEOC investigation  
24 was still ongoing?

25 A. Yes, it was.

1 Q. When Sergeant Hubbard came back, what happened?

2 A. There were balloons and signs all over his and Rob Smith's  
3 door, and he called a team meeting in his office for ROP.

4 Q. And what did he say in the team meeting?

5 A. He opened his team meeting with a phrase that -- he didn't  
6 identify who the phrase came from, but he said "A famous man  
7 once said, it's been a little unpleasant for me, but it's going  
8 to be far worse for you."

9 Q. And who was he saying that to?

10 A. The whole team.

11 Q. Okay. What did he say after that?

12 A. He gave us a set of new rules that we had to abide by, and  
13 they were very restrictive. They --

14 Q. What were the rules?

15 A. Oh, things like we had to communicate with him in writing.  
16 We had to give him copies of all of our court subpoenas. We  
17 had to clear all of our suspects through him before we worked  
18 on them. We weren't allowed to ride two men anymore in a  
19 vehicle, which is a surveillance technique which is very useful  
20 and helpful for us. The on-call rotation was changed to where  
21 we weren't working with the same people anymore. We had an  
22 arrest log that we kept in the office, and ROP was never a  
23 stat-driven unit, and now it was going to be kept track of.  
24 Only one detective could write down who arrested the person  
25 even though the whole team had to be involved in every single

1 arrest.

2 Q. So before Sergeant Hubbard had left, you still had this  
3 arrest log?

4 A. Correct.

5 Q. And what would you put in the arrest log when you made an  
6 arrest?

7 A. ROP team.

8 Q. And with the new rule, what was supposed to be put in  
9 there?

10 A. One detective's name.

11 Q. How did you feel about that change to the arrest log?

12 A. Honestly, I felt like I was at a disadvantage.

13 Q. Why would you be at a disadvantage?

14 A. Because I was assigned to be a Burglary liaison. I didn't  
15 have any choice in that liaison assignment. And when we set  
16 out for the day to hunt for or to search for our suspects,  
17 whoever found their suspect, the whole team would then converge  
18 and help that person, but it was also priority driven. So if a  
19 homicide took place, homicide would obviously trump a burglary,  
20 or a robbery would trump a burglary. A violent crime would  
21 trump my property crime assignment every time because I'm a  
22 property crime liaison. I'm basically at the bottom of the  
23 stack through no choice of my own.

24 So I believed it was now becoming a stat-driven unit  
25 and the deck is stacked against me out of my own control. So I

1 felt like they were going to start setting me up to show that I  
2 wasn't contributing as much to the team stats, if you will,  
3 because I'm assigned to this Burglary unit. I felt stuck.

4 Q. After that meeting, were there any other team meetings?

5 A. Well, I wasn't finished with all the expectations. He was  
6 going to make us debrief at the end of each day.

7 Q. I'm sorry.

8 A. It was very inconvenient to everybody. Whether we need a  
9 reason to or not. Everybody wants to get home at the end of  
10 the day, but we all had to converge at whatever site he decided  
11 to meet him for no particular reason. Just an inconvenience  
12 for everybody.

13 Q. Were there any other rules that he put in play?

14 A. We now had to comp out or vacation out for any personal  
15 appointments, where before that was never a requirement.  
16 That's pretty much it.

17 Q. Okay. During this team meeting, what was the general  
18 demeanor of the team as they were told these new rules?

19 A. A lot of sighs, a lot of -- you know, not a happy mood.

20 Q. Okay. Were there any other meetings that took place after  
21 that with the team?

22 A. With Danny Garcia.

23 Q. Were you present for that meeting?

24 A. I was -- Well, there was a meeting that Danny held on his  
25 own. He was sort of our senior detective.



1 Q. Okay. Did you attend that meeting?

2 A. No.

3 Q. But you knew that Danny Garcia had held a meeting?

4 A. Yes.

5 Q. After the new rules meeting?

6 A. Yes.

7 Q. Got it. Now --

8 MR. VILLA: Your Honor, may I approach?

9 THE COURT: You may.

10 Q. (By Mr. Villa) Ms. Welch, I'm showing you what is marked  
11 for identification as Plaintiff's Exhibit 42. Is that a memo?

12 A. Yes, it is.

13 Q. What's the date on that?

14 A. November 25th, 2009.

15 Q. And who is the memo from?

16 A. Commander Joseph Hudson.

17 Q. And who is it to?

18 A. Me.

19 Q. How did you receive that memo?

20 A. I received this memo in my mailbox at SID.

21 Q. And did you receive it at about the time that it's dated?

22 A. I believe so.

23 MR. VILLA: Your Honor, I'd move to admit Exhibit 42.

24 THE COURT: As to 42?

25 MS. WILLIAMS: Your Honor, we object. It's

1 irrelevant.

2 MR. VILLA: Can we approach, Your Honor?

3 THE COURT: You may.

4 (Bench conference on the record.)

5 THE COURT: Okay. Let me see it.

6 MR. VILLA: Your Honor, the relevance of this memo is  
7 that it's from Captain Hudson to Terysa Welch. He's not  
8 directly in her chain of command. And the memo conveys that on  
9 two separate occasions, in October 2009 and November of 2009,  
10 when she was accused by Detective Gagne and Potter as well as  
11 Sergeant Hubbard of essentially not doing her job, and so the  
12 memo goes to show the retaliation that was beginning against  
13 Ms. Welch with these two specific incidents.

14 THE COURT: The retaliation being specifically?

15 MR. VILLA: That these detectives who are named in  
16 her Complaint, all three of them, Potter, Gagne, and Hubbard,  
17 were accusing her of not doing her job and that Captain  
18 Hudson -- Commander Hudson wrote a note to Ms. Welch and made  
19 her respond to it.

20 MS. WILLIAMS: Your Honor, I'm going to object.  
21 Those individuals were not named in any EEOC Complaint. That's  
22 why you gave them qualified immunity. And he keeps saying that  
23 to the jury. And I object to that characterization. They were  
24 not named in the Complaint.

25 MR. VILLA: Yes, they were. They were in the

1 attachment that she gave --

2 THE COURT: Hold on. Just to be clear, we're talking  
3 about the EEOC?

4 MS. WILLIAMS: Yes, sir.

5 MR. VILLA: In the EEOC Complaint, she attached a  
6 16-page Complaint to both of those documents, and these three  
7 individuals were all named in those -- in that 16-page  
8 Complaint.

9 THE COURT: Okay. Do I have to go back and look at  
10 the 16-page Complaint to --

11 MR. VILLA: I don't think so. Because you ruled on  
12 this when it came to the exhaustion. But the qualified  
13 immunity was because the Court found not enough evidence for a  
14 1991 conspiracy. It didn't have anything to do with what she  
15 put in her Complaint or not.

16 MS. WILLIAMS: You gave them qualified immunity under  
17 all the federal claims, and they weren't related to the State  
18 claims, that's how I recall, but they weren't named in the EEO.  
19 You specifically addressed that in your exhaustive order.

20 Now, there's a set of exhibits here, 42, 43, 44, in  
21 which there are Complaints and an Answer to a Complaint. No  
22 discipline ensues. Nothing happens to her. Her coworkers are  
23 unhappy with her.

24 THE COURT: Okay. Let's do this. It's 2:45. Let me  
25 release the jury just for a break.

1 MS. WILLIAMS: Sure. Sure.

2 THE COURT: This may take a little while because  
3 we're dealing with additional --

4 MS. WILLIAMS: Yes.

5 MR. VILLA: Your Honor, I don't necessarily intend  
6 to admit her responses to these, because it's just her  
7 defending herself, and we can -- you know, that will  
8 short-circuit things.

9 THE COURT: What do you mean "her responses"?

10 MR. VILLA: So that the next two exhibits are her  
11 responses to this memo.

12 THE COURT: And which are those?

13 MR. VILLA: 43 and 44, and then 44 has attachments.  
14 I don't plan to get into those. I plan to get into this  
15 because it shows their intent to accuse Ms. Welch of not doing  
16 her job and Captain Hudson's intent to start documenting that,  
17 and this has never happened in the five years she's been in  
18 ROP.

19 THE COURT: All right. All right.

20 MS. WILLIAMS: Then I can respond to that a little  
21 bit.

22 THE COURT: All right.

23 (Open court.)

24 THE COURT: All right. Ladies and gentlemen, as I  
25 see, we're getting close to, I guess, 2:45, probably a good

1 time to take a break. Ten minutes. Fifteen minutes. And then  
2 at that time we'll reconvene.

3 All right. Please rise for the jury.

4 (Jury out at 2:43 p.m.)

5 THE COURT: All right. I think you still have  
6 Exhibit 43 or 42 in your possession, but I'm getting my copy.

7 Ms. Williams.

8 MR. VILLA: I do, Your Honor, and Exhibit 9, which  
9 we're not intending to admit, but that's the attachment to both  
10 the EEOC Complaint and the Internal Affairs Complaint that she  
11 testified was provided and was subsequently leaked. And all of  
12 these individuals are named in that 16-page Complaint.

13 THE COURT: Okay. And, Ms. Williams.

14 MS. WILLIAMS: Your Honor, as you noted in your  
15 qualified immunity order, these individuals were not named in  
16 the -- in the EEOC Complaint as -- excuse me -- in the EEOC  
17 Complaint itself. This is an addendum, and it goes from --  
18 That's not my main problem with these. My main problem with  
19 these is that they're irrelevant. They don't end up -- An  
20 investigation is done, and nothing happens to Ms. Welch.  
21 Lieutenant Welch does not experience discipline, she doesn't  
22 experience anything except the having to respond to her  
23 coworkers' complaints.

24 THE COURT: Okay. Anything else with regard to  
25 relevance, Mr. Villa?

1 MR. VILLA: So, with respect to relevance, Your  
2 Honor, there doesn't have to be discipline to make it relevant.  
3 The relevance is whether these individuals subsequent to her  
4 making a Complaint were now accusing her of not doing her job,  
5 and that goes to show that -- their intent to retaliate, their  
6 motives, those sorts of things we have to prove. Just because  
7 it didn't end up in discipline doesn't mean it's not relevant.

8 With respect to your qualified immunity, again, that  
9 had nothing to do with what was mentioned in the EEOC Complaint  
10 or not. Your opinion on exhaustion with respect to the Human  
11 Rights Act held that these individual defendants weren't going  
12 to be named defendants, not because she didn't name them in  
13 this Complaint, she did, but because the Human Rights Division  
14 didn't issue a decision, and that's why there wasn't exhaustion  
15 of the Human Rights decision.

16 We're complaining about a bunch of different issues,  
17 but when we just get it down to relevancy, these individuals  
18 are now targeting Ms. Welch and complaining about her work  
19 performance. And Captain Hudson, who's way up in the chain of  
20 command, is issuing memos to Terysa Welch, which again I think  
21 gets back to the Brett Lampiris-Tremba statement that right  
22 before -- a month before this, the statement that the Court  
23 excluded was that he was intending to discipline someone,  
24 Hudson was, out of the ROP unit. And so I think this starts to  
25 build up to what ultimately becomes Ms. Welch being moved from

1 the unit and later being disciplined.

2 THE COURT: So that is at least in part because of  
3 the Complaint she filed against them, allegedly.

4 MR. VILLA: Yeah.

5 THE COURT: How would they be privy to that to be  
6 able to report or complain about her? What's the causal  
7 connection between the Complaint that Ms. Welch filed and what  
8 they set out to do to her? At least your position.

9 MR. VILLA: Well, that's what we have to prove. We  
10 have to prove that because she filed a Complaint, they start  
11 complaining about her work performance.

12 THE COURT: Okay. So I guess my question is, how  
13 would you proffer they knew about what she put in her Complaint  
14 about them?

15 MR. VILLA: Well, I think that one of the things that  
16 the defense conceded when we were fighting about whether to  
17 introduce the EEOC documents, is that they were aware of the  
18 EEOC Complaint. We will be able to show through other  
19 witnesses, including Lieutenant West, that he interviewed these  
20 individuals as part of his IA investigation into Terysa Welch's  
21 complaint.

22 Ms. Welch testified that even though she was told her  
23 Complaint would be kept confidential, that within a couple of  
24 days individuals within the SID knew about the Complaint and  
25 that it was on a blog. And so the jury can draw the inference

1 or not that these individuals knew about Terysa's Complaints  
2 against them.

3 She also testified about the August 20th meeting in  
4 which Detective Potter and Detective Gagne brought her in and  
5 asked her what was going on and became angry. This was after  
6 she complained to her supervisors about the punctuality memo.

7 And Sergeant Hubbard, who's one of the people in this  
8 memo, Exhibit 42, that's accusing Terysa Welch of not doing her  
9 job was removed from the unit after she filed her EEOC  
10 Complaint. So there's no question that he knew about the EEOC  
11 Complaint, because he was removed from the unit.

12 THE COURT: Let's take a recess. We'll be back and  
13 give you at least a ruling or a partial ruling on this. We'll  
14 be in recess.

15 (Court stood in recess at 2:49 p.m. and resumed at  
16 3:05 p.m. as follows:)

17 THE COURT: All right. Please be seated.

18 All right. So Exhibit 42 is where we left off.

19 MR. VILLA: Yes, Your Honor. And there was one other  
20 thing that -- this will come in through -- I think through  
21 perhaps two other witnesses, or at least Joe Hudson, is there's  
22 an e-mail that I'm showing you. This is from Exhibit 51,  
23 second page, between Sue Neal, who's the HR person for APD, and  
24 Joe Hudson on November 23rd, 2009, just two days before this  
25 memo is issued in which she's talking to him about, you know,



1 whether he should provide her a memo. And I don't necessarily  
2 think it's the same memo. I guess it's unclear.

3 But she's essentially saying to Joe Hudson, Don't do  
4 this. I predict that she will perceive this as retaliation for  
5 her Complaint. And so the fact that he then sent this other  
6 memo, the memo that she and Mr. Hudson are talking about, I  
7 think are different memos, but the fact that he sent this other  
8 memo again goes to show his retaliation toward her.

9 THE COURT: Are you going to offer this Number 51  
10 for -- we're on 51 -- through Ms. Welch?

11 MR. VILLA: I don't think so, Your Honor. I was  
12 planning to do it through Mr. Hudson or Ms. Neal.

13 THE COURT: Okay. Back to 42. We'll get there, but  
14 back to 42. I am finding it's relevant in that it would at  
15 least speak to what, if anything, occurred after Ms. Welch  
16 filed her EEOC Complaint and how that could have been as a  
17 result of that protected activity and anything that resulted  
18 that were of an adverse nature.

19 This speaks to complaints, this describes complaints  
20 that at least two people had about Ms. Welch, founded or  
21 unfounded. That's what we have in this exhibit. Whether these  
22 two individuals are named in the EEOC Complaint or an  
23 attachment to the Complaint, is it your position, Mr. Villa,  
24 that they were aware that they were named in the Complaint?

25 MR. VILLA: Yes, Your Honor. And --

1 THE COURT: Is that critical to your position, that  
2 they are aware of that Complaint and that they were named in  
3 the Complaint?

4 MR. VILLA: I think with respect to retaliation it is  
5 because of the Nassar case, which requires the "but for"  
6 causation between the retaliation -- or the filing of the  
7 Complaint and the retaliation.

8 THE COURT: Okay. Well, I'm going to find it is  
9 relevant. I've thought about this in the break, and  
10 considering how or whether or to what extent it is sufficiently  
11 probative under 403, I'm going to admit that. Also, because I  
12 find that it does fit within 801(d)(2)(D) and the exception  
13 that applies. So I will admit Number 42, so you can continue  
14 your examination on that, Mr. Villa.

15 MR. VILLA: Yes, Your Honor.

16 (Plaintiff's Exhibit 42 admitted into evidence.)

17 THE COURT: All right. Please rise for the jury.

18 (Jury in at 3:09 a.m.)

19 THE COURT: Okay. Please be seated.

20 All right. Folks, as you are on your break, I say  
21 ten or 15 minutes and it turns out to be more like 20 minutes  
22 or so, so I can tell you we're using the time wisely, we're  
23 sorting out a lot of evidentiary issues critical to the  
24 parties, so as we do that, it does take a little more time, so  
25 I appreciate the time that you spend in the back and waiting

1 for us to reconvene. So, anyway, thanks. We're back.

2 Mr. Villa.

3 MR. VILLA: Yes, Your Honor. Thank you.

4 Q. (By Mr. Villa) Ms. Welch, when we took a break, we were  
5 talking about Plaintiff's Exhibit 22 [sic], the memo you  
6 received from Commander Hudson.

7 MR. VILLA: Your Honor, may I publish that to the  
8 jury?

9 THE COURT: You may.

10 Q. (By Mr. Villa) There's Exhibit 42. Detective Welch,  
11 this memo indicates that there were two issues that came to  
12 Captain Hudson's attention recently and he wanted to hear your  
13 side of the story. The first was an incident on October 21st,  
14 2009. Do you see that there?

15 A. Yes.

16 Q. It involved Detective Potter and Detective Gagne. Is that  
17 correct?

18 A. Right.

19 Q. And both of those were the subject of your Complaint to  
20 the EEOC and Internal Affairs?

21 A. Yes.

22 Q. And it indicates here that you failed to cover Detective  
23 Potter?

24 A. Correct.

25 Q. Okay. Let me ask you this. Do you remember this incident

1 of October 21st, 2009?

2 A. Yes, I did.

3 Q. After that incident, did anybody come to you and say, you  
4 know, "What happened here? You failed to cover Detective  
5 Potter"?

6 A. Not until I received this memo.

7 Q. So you hadn't heard from Detective Potter or Detective  
8 Gagne?

9 A. No, I had not.

10 Q. Was that unusual?

11 A. Very.

12 Q. Why was that unusual?

13 A. Because in a -- in a unit like ROP, after you have an  
14 operation like this, if there's an issue that somebody wants to  
15 bring up, you do it immediately after you're finished with  
16 whatever the incident is.

17 Q. And in the past have Detectives Gagne and Potter done that  
18 with you?

19 A. Yes.

20 Q. And why do you want to bring it up immediately after the  
21 incident?

22 A. Well, for several reasons. Number one, it's fresh in  
23 everybody's mind. Number two, especially with this sort of an  
24 issue, which is an allegation of a big officer-safety issue,  
25 you can't let this go for over a month with it reoccurring. It

1 has to be addressed immediately and it has to stop immediately  
2 if that's what, in fact, would have taken place.

3 Q. Let's talk about the second incident. That occurred on  
4 November 16th. Do you see that there?

5 A. Yes.

6 Q. Okay. And it said that ROP detectives were conducting  
7 some surveillance and one of the detectives involved was  
8 Detective Gagne?

9 A. Correct.

10 Q. And Sergeant Hubbard?

11 A. Yes.

12 Q. And, though, this is, oh, a couple of weeks or so after  
13 Sergeant Hubbard came back. Is that right?

14 A. Yes.

15 Q. And it talks about that you made an obvious and conscious  
16 decision to leave Sergeant Hubbard by himself in the course of  
17 this surveillance. Do you see that there?

18 A. That's what it says.

19 Q. Now, do you remember this November 16th surveillance  
20 operation you guys were doing?

21 A. I don't remember it now. I responded to the memo at the  
22 time.

23 Q. Okay. Let me ask you this. After -- Immediately after  
24 this surveillance operation, did Sergeant Hubbard debrief with  
25 you after the incident?

1 A. No, he did not.

2 Q. What about Detective Gagne?

3 A. Nobody debriefed it.

4 Q. Before you got this memo, did anybody come to you and ask  
5 you "What happened with the surveillance?"

6 A. No, they did not.

7 Q. And it indicates here that you would like -- the Captain  
8 would like -- or I guess it says "Commander." They changed the  
9 term from Captain to Commander; is that right?

10 A. They did.

11 Q. Okay. This is the same Joseph Hudson that you met with  
12 after you met with Lieutenant Smith regarding your wanting to  
13 file an EEOC Complaint.

14 A. Correct.

15 Q. He asked you to file a written response on December 1st,  
16 2009?

17 A. Correct.

18 Q. And you just testified you did that?

19 A. I did that.

20 Q. Okay. After you filed the written response, did anything  
21 else become of this?

22 A. No.

23 Q. Were you disciplined in any way?

24 A. No.

25 Q. Now, that was November 25, 2009. In early December, did

1 you have any chance to run into Lieutenant Smith?

2 A. Yes, I did.

3 Q. Can you tell the jury about that.

4 A. I was working at my cubicle at SID and I had printed  
5 something from my desk. The copier was way at the other end of  
6 the building. So I turned the cubicle to come out to the  
7 hallway to go down to the copier and pick up my document, and I  
8 could see Rob Smith coming head-on with me from the other  
9 direction, and I almost turned back around and just waited for  
10 him to pass by, but I told myself It's fine, just go, just go  
11 get your document.

12 Q. What kind of hallway is this? How large is the hallway?

13 A. Oh, it's about the same width as this space right here  
14 between the defense table and the beginning of the jury box.

15 Q. And since we don't have that for our record, how many feet  
16 would you estimate that is?

17 A. I don't know. Ten, ten feet.

18 Q. Okay. So you didn't turn around?

19 A. I didn't turn around. I just told myself, Just it's fine,  
20 just go, just go get it.

21 And I kept going towards the copier, and as I got  
22 closer to Lieutenant Smith, he kept encroaching upon my space.  
23 I was against the wall and I had a coat on. It was wintertime.  
24 I had a coat on. And as I got closer to him, he got like this  
25 to me (indicating), he bowed his chest out and his face out to

1 me, he gave me a very mean look, and I had to go like this  
2 (indicating) up the wall. I heard my coat scrape up the wall  
3 as I turned sideways, and it just -- I just -- it was -- just  
4 was a horrible confrontation. And he didn't actually make  
5 contact with my body, but if I had not turned sideways like  
6 this (indicating) we would have -- I have no doubt in my mind  
7 our bodies would have contacted. And he just --

8 Q. Now let me ask you this. Did he say anything to you?

9 A. No, nothing.

10 Q. Did you say anything to him?

11 A. "Really, Rob?" (Indicating).

12 Q. Did he respond to that?

13 A. No. He kept walking.

14 Q. Now, around this time, did you receive anything else in  
15 your mailbox or your in box that you have there?

16 A. I did.

17 Q. What did you receive?

18 A. I received a blank transfer request form.

19 Q. What is a transfer request form?

20 A. That's what you fill out when you want to leave your  
21 position and go to another position.

22 Q. Had you put that transfer request form there?

23 A. No.

24 Q. Had you asked anyone to provide you a transfer request  
25 form?



1 A. No. Absolutely not.

2 Q. In early December, did you come to have an occasion to  
3 have conversations with Former Deputy Chief Elizabeth Paiz?

4 A. Yes, I did.

5 Q. Can you tell the jury about that.

6 A. Sure. I called Deputy Chief Paiz and I had confided in  
7 her some of the things that were going on at SID.

8 Q. Let me stop you for just a minute. So we know there's a  
9 ROP unit, a ROP unit has a Sergeant, there's a Lieutenant who  
10 oversees that unit and other units in SID, the Captain or  
11 Commander Hudson is above --

12 MS. WILLIAMS: Your Honor, counsel's testifying, and  
13 I don't think it's his job.

14 MR. VILLA: It's already been testified to. I'm just  
15 trying to get there a little bit faster.

16 THE COURT: Well, you may proceed. It's mostly  
17 foundational, so I'll allow it.

18 Q. (By Mr. Villa) So the Commander is above the Lieutenant.  
19 Who's above the Commander?

20 A. Deputy Chief Paiz.

21 Q. Okay. So the next thing in the chain is the Deputy Chief?

22 A. Correct.

23 Q. And who's above the Deputy Chief?

24 A. The Chief.

25 Q. Okay. So you just testified this you told Deputy Chief

1 Paiz about some of the things that were going on. Is that  
2 right?

3 A. That's correct.

4 Q. And do you remember when you first contacted Deputy Chief  
5 Paiz?

6 A. It was right around that time she had taken the place of  
7 the previous Deputy Chief.

8 Q. Okay. Let me show you an exhibit that I believe's already  
9 been stipulated to.

10 MR. VILLA: This is Exhibit 4, Your Honor, which it's  
11 admission has been stipulated. May I publish?

12 THE COURT: You may publish.

13 Q. (By Mr. Villa) There's Exhibit 4, Ms. Welch, and I'm  
14 showing you -- I'll represent to you this has been stipulated  
15 to by the parties. These are notes from Deputy Chief Paiz.  
16 And it says in here that on December 4th you guys had a call.  
17 Does that sound about the time frame?

18 A. That seems about accurate.

19 Q. Okay. And it said in here that Ms. Welch told you -- told  
20 her that "she was grateful for the call, as no one had ever  
21 called her." Do you remember that?

22 A. I would go with that.

23 Q. Okay. And she indicated: "My primary concern was her  
24 safety and to see what issues were resolved and which were  
25 pending." Do you remember that?

1 A. I don't specifically remember that, but that's probably  
2 the gist of the conversation.

3 Q. Okay. And I can get into some more of this a little bit  
4 later, but did you have a conversation with Deputy Chief Paiz  
5 about whether to transfer?

6 A. When I called -- When I spoke with Deputy Chief Paiz, I  
7 told her my concerns about the hallway incident and the  
8 transfer request form. She --

9 Q. And you had more than one conversation with Deputy Chief  
10 Paiz in the month of December.

11 A. Probably so, yes.

12 Q. Okay. So go ahead. I'm sorry. You had you told Deputy  
13 Paiz your concerns about these incidents?

14 A. Correct.

15 Q. And then what?

16 A. And she replied to me that "I can't have you working in  
17 conditions like that. I need some time to make some changes."  
18 And up to that point she was the only person that gave the  
19 appearance that she was going to help me. And she seemed  
20 genuinely concerned for me. And I just -- I grabbed on to that  
21 and I believed her.

22 Q. Now, after you told her about your concerns and your  
23 safety, like we talked about, did you guys have a conversation  
24 about transferring?

25 A. Yes. She said, "Where can I put you until I can figure

1 out what to do?"

2 Q. Did you want to transfer from ROP?

3 A. Not particularly, no. It's my job that I loved.

4 Q. Did you want to stay in ROP under the conditions that  
5 you've just told the jury about?

6 A. At that point it had come to a physical -- almost a  
7 physical altercation with my Lieutenant, and I was afraid. So  
8 under those conditions, I became extremely worried for myself,  
9 and I wasn't getting backup, I was starting to become very  
10 concerned, admittedly. She asked me to cooperate in going  
11 somewhere until she could make some changes.

12 Q. How was your emotional well-being at this time?

13 A. Very, very poor.

14 Q. Give me an idea of what was going on with you emotionally.

15 A. Well, I wasn't sleeping well. I was starting to not trust  
16 people that I was working with. I was suspicious of people  
17 that I before depended on protecting my life, and now I  
18 mistrusted my own supervisors. Yeah, my eating wasn't well. I  
19 was losing weight. These kinds of things.

20 Q. So you just testified that Ms. Paiz told you she needed  
21 some time and you talked about a transfer.

22 A. Yes.

23 Q. Did you talk about where you might transfer to?

24 A. Yes, we did.

25 Q. And where was that?

1 A. The Academy was my first choice.

2 Q. Okay. And now, before -- Well, why was the Academy your  
3 first choice? I'm sorry.

4 A. I don't know. I -- I just threw it out there. I couldn't  
5 stay at SID because Rob Smith was there. He was in charge of  
6 everything at SID.

7 Q. Now, before any transfers, did you attend any kind of  
8 training in December 2009?

9 A. Yes.

10 Q. What was that training?

11 A. That was an EEOC mandatory training for all of SID.

12 Q. And do you remember when you attended that training?

13 A. October, October 10th, something like that.

14 Q. Let me see. So a minute ago I was asking you if this was  
15 in the December time frame. Do you think it was October or  
16 December?

17 A. It may have been December.

18 Q. Let me show you a document that's already been stipulated  
19 to, Your Honor.

20 MR. VILLA: May I -- It's Exhibit 114. May I publish  
21 that?

22 THE COURT: All right. Just one moment. 114, you  
23 say?

24 MR. VILLA: Yes, Your Honor.

25 THE COURT: Okay. Go ahead.

1 Ladies and gentlemen, some of these exhibits were  
2 pre-admitted pretrial, so no ruling necessary at this time.

3 Mr. Villa.

4 MR. VILLA: Yes, Your Honor.

5 Q. (By Mr. Villa) Ms. Welch, I'm showing you Exhibit 114,  
6 and at the top it says it's an "EEO Training (4 hours),"  
7 December 10th, 2009.

8 A. Yes.

9 Q. Does that sound like the time when you went to the  
10 training?

11 A. Yes.

12 Q. Okay. And it's got a sign-in here, and I'm marking it for  
13 the jury. Is that your name where you signed in?

14 A. Yes, it is.

15 Q. And below that you see the name of Maureen O'Brien?

16 A. Correct.

17 Q. Do you remember if Maureen O'Brien was present at that  
18 training?

19 A. Yes, she was.

20 Q. And who put on that training?

21 A. Sue Neal.

22 Q. Who's Sue Neal?

23 A. I understood her to be an HR director or some kind of a  
24 manager.

25 Q. Is HR, is that Human Resources?

1 A. Yes, sir.

2 Q. Now, you testified that the training was for all of SID.  
3 Is that right?

4 A. Yes.

5 Q. Do you know why -- Well, let me ask you this. Do you know  
6 if anyone outside of SID attended the training?

7 A. Not to my knowledge.

8 Q. Okay. And it indicates on here some of the other  
9 individuals present. Kevin Gagne, Jerry Potter, Mike Hill. Do  
10 you remember them being there?

11 A. Not specifically.

12 Q. Okay. Tell me what happened at that training.

13 A. The training was very awkward and unprofessional.

14 Q. What do you mean by awkward?

15 A. It was -- I don't know Ms. Neal well, but she -- she was  
16 swearing heavily. She was divulging a lot of people's personal  
17 experiences that I felt was inappropriate.

18 Q. What do you mean, "people's personal experiences"?

19 A. Sex changes, using people's names.

20 Q. When you say "people" what people?

21 A. People within the City, City employees.

22 Q. Okay. What else was awkward about it?

23 A. She called the training punitive training multiple times.

24 Q. And when she said the word "punitive," what did you take  
25 that to mean?

1 A. Well, she stated it was as a result of the EEOC Complaints  
2 that had been filed at SID.

3 Q. Okay. And I'm going to show you again what I already  
4 showed you earlier, Exhibit 4, Ms. Paiz's notes where she  
5 indicates right here that "Terysa texted me and told me that  
6 the EEOC training given by Sue Neal was 'punitive' and Sue  
7 cited recent EEOC complaints caused the mandatory training."

8 Is that what you're talking about?

9 A. Yes.

10 Q. Okay. What else happened at the training?

11 A. Well, Maureen O'Brien and I were the only two females in  
12 the division of SID and we were both sitting in the training  
13 and everyone in the training was told that they were there  
14 because of the two EEOC Complaints filed at SID. And being the  
15 only two people responsible for filing those Complaints, we  
16 felt responsible for making them sit through four hours of  
17 training which they didn't want to sit through. So Maureen  
18 particularly became very, very physically uncomfortable.

19 MS. WILLIAMS: Objection, Your Honor. I don't  
20 believe this witness can testify about Detective O'Brien's  
21 state or --

22 MR. VILLA: She's just talking about what she  
23 observed, Ms. O'Brien's demeanor, not statements or anything  
24 like that.

25 THE COURT: Well, I think the jury can decide how



1 much reliability or weight to put to this testimony. It does  
2 kind of get to some speculation on the witness's part, but if  
3 you -- I'll let you go ahead based on only her -- the witness's  
4 perceptions.

5 Q. (By Mr. Villa) So, Ms. Welch, let me ask you, what did  
6 you see Maureen O'Brien doing physically?

7 A. Fidgeting, moving about in her chair. She was sitting  
8 right next to me. She -- Her face turned red. She -- Her  
9 sighs, things like that. She was obviously uncomfortable with  
10 what Sue Neal was saying in the lecture.

11 Q. And was it after that lecture that you then texted Deputy  
12 Chief Paiz about it?

13 A. Yes, it was.

14 Q. Okay. Now, after this training, what's the next thing  
15 that happened? Did you stay -- Well, what happened at the  
16 training?

17 A. Again, I let Deputy Chief Paiz know about it, searching  
18 for help again from her, and I believe it was a short time  
19 later that I was removed from SID.

20 Q. Okay. So let me show you the second page to Exhibit 4.  
21 It says at the top here, "at 1730 hours, I received a text from  
22 Terysa, stating she did not feel safe in ROP any longer and was  
23 wondering if she could TDY any earlier."

24 Do you see that there?

25 A. Uh-huh.

1 Q. What does TDY mean?

2 A. Temporary duty assignment.

3 Q. Was that referring to a transfer?

4 A. That was referring to a transfer.

5 Q. Okay. It also talks about here the issue with Lieutenant  
6 Smith and the transfer request. You told Deputy Chief Paiz  
7 about those?

8 A. I did.

9 Q. Okay. Where did you get transferred to?

10 A. I ultimately got transferred to the Burglary unit.

11 Q. And do you know if there was an open spot there in  
12 Burglary or why you got transferred to the Burglary?

13 A. I don't think there needs to be an open spot for a TDY.

14 Q. Okay. The Burglary unit, that's the unit you liaised  
15 with when you were with ROP?

16 A. Correct.

17 Q. All right. Talk to me a little bit about what's the  
18 differences between being a detective in Burglary versus being  
19 a detective in ROP.

20 A. Well, it's huge. Burglary is -- It's a very bland, I  
21 would describe it, detective unit. You usually get a report.  
22 It's taken from a field officer that states, you know, these  
23 people had their home broken into, maybe some latents were  
24 picked up, and there may be some follow-up evidence that would  
25 help you identify who a possible suspect was. You might be

1 able to write an arrest warrant and go pick up the offender way  
2 down the road. But there's -- there's nothing like the level  
3 of -- I don't want to downplay a Burglary detective's  
4 importance, because when somebody has their home broken into,  
5 that is, of course, the most important thing to them in the  
6 world, but as opposed to the level of criminals that ROP deals  
7 with, it is almost worlds apart. ROP criminals are homicide  
8 offenders, sexual predators, robbery offenders. You know, it's  
9 just a huge step down from a ROP detective's job. ROP  
10 detectives are on the spot. You have a lot of in-progress  
11 arrests, is the best way for me to describe that.

12 Q. Is the Burglary unit in the Special Investigations  
13 Division?

14 A. No, it is not.

15 Q. So it's in a different division?

16 A. Yes.

17 Q. Do you know which division?

18 A. That would be under Property Crimes. I believe it would  
19 be under Criminal Investigations.

20 Q. How many hours do you work in Burglary compared to ROP?

21 A. Unless you're on call, you would be 40 hours a week.

22 Q. What about overtime?

23 A. Unless you're on call, there's no overtime.

24 Q. And compared to ROP, how much more overtime was there --  
25 or, excuse me -- how much more overtime was there in ROP

1 compared to Burglary?

2 A. Oh, there's way more overtime in ROP because of the  
3 homicides that are unpredictable and constantly ongoing, and  
4 then even if you're not on call in ROP, you still need the team  
5 to assist you with the arrest and the surveillance and the  
6 operations that we have to go out on.

7 Q. So was there more team activity with ROP than there was  
8 with Burglary?

9 A. Everything in ROP is a team activity. Nothing in ROP is  
10 individual. Everything is team activity.

11 Q. When you first were transferred to Burglary, how long did  
12 you anticipate the temporary transfer to be?

13 A. Temporary transfers are 45 days maximum.

14 Q. Okay. So when the 45 days came up for the transfer, did  
15 you have a discussion with Chief Paiz, Deputy Chief Paiz about  
16 transferring back to ROP?

17 A. She stated she needed more time.

18 Q. Okay. Let me show you the second page of Exhibit 4 again.  
19 Deputy Chief Paiz's notes. And it says right here on  
20 January 28th, I think that's supposed to be 2010, she "was  
21 contacted by Joe Hudson, who was asking when Terysa's 45 days  
22 were up," and she said "February 8th she would be going back to  
23 ROP. He then asked for a meeting with [her] and all of the  
24 guys from ROP to see what their 'options' were."

25 Do you see that?

1 A. I see that.

2 Q. The next sentence says, at 1830 hours, she called you and  
3 told you that you would be going back to ROP. It says, "she  
4 would have to go back to ROP on February 8th." And she asked  
5 you how you felt about that. And you said that you did not  
6 want to go back if nothing had changed.

7 Do you remember that conversation?

8 A. I don't remember that conversation.

9 Q. Okay. Do you remember feeling that you didn't want to go  
10 back if nothing had changed?

11 A. Why would I want to go back if nothing had changed?

12 Q. So let me ask you that. Do you know, is Sergeant Hubbard  
13 still there in the ROP unit?

14 A. He would have still been there in the ROP unit.

15 Q. What about Lieutenant Smith?

16 A. Yes.

17 Q. Okay. So ultimately did you go back to ROP after  
18 February 8th, 2010?

19 A. No.

20 Q. And so let me ask you also now about other things in  
21 Burglary. What were you doing while you were in Burglary  
22 during this temporary time?

23 A. Nothing.

24 Q. What do you mean, "nothing"?

25 A. They wouldn't give me a caseload because they didn't know

1 how long I was going to be there.

2 Q. So what did you have to do?

3 A. Honestly, I did nothing. I looked at some AFIS cases,  
4 which are cases where a fingerprint was picked up at a scene  
5 and they run the fingerprint through an Automatic Fingerprint  
6 Information System, AFIS, Automatic Fingerprint System, and  
7 because the crime lab is so backed up, most of those cases were  
8 way after the Statute of Limitations of being able to still  
9 charge somebody with a burglary, so they were worthless.

10 The few that were still active and I could write an  
11 arrest warrant for somebody for breaking into somebody's home  
12 and finding their fingerprints in there and stealing from them,  
13 I write an arrest warrant and go ahead and enter the warrant  
14 into our NCIC system and have an active warrant out there for  
15 somebody to be arrested for that. That was my only job in  
16 Burglary.

17 Q. Now let me show you another note from Ms. Paiz's notes.  
18 Here on February 1st, 2010, she discusses a meeting she had  
19 with -- I think that's supposed to say Gagne, Wycoff, Potter,  
20 Hill, Hubbard, Stephensen and Smith. And everyone said how  
21 they feel uncomfortable about you returning to the team and  
22 that she didn't think it was fair to bash a person when they  
23 weren't there to defend themselves.

24 But ultimately she told you that you were free to  
25 request an extension of your TDY to Burglary, you know, the

1 choice was yours. So did you ultimately extend that -- Was the  
2 temporary assignment to Burglary ultimately extended?

3 A. Yeah. My TDY was extended for 14 months.

4 Q. When did the TDY actually end?

5 A. Sometime in 2011.

6 Q. Okay. Now, this talks in -- July 9th, 2010, is the next  
7 note from Deputy Chief Paiz. Before that time period and after  
8 the February time period, did she tell you anything with  
9 respect to whether Sergeant Smith -- excuse me -- Lieutenant  
10 Smith and Sergeant Hubbard were going to remain in the ROP  
11 unit?

12 A. Deputy Chief Paiz told me that she had done her own  
13 investigation, and she told me that she recommended the removal  
14 of the supervisors, but that Chief Schultz told her no, that he  
15 wanted those supervisors to be able to save face. That was her  
16 wording, that he wanted them to be able to save face and allow  
17 them to retire out of the unit.

18 Q. So now let's fast forward to July. And it talks about  
19 here in July a meeting between yourself, Commander Prudencio,  
20 Commander West, and Deputy Chief Paiz about you coming back now  
21 that there was a new chain of command. Do you remember this  
22 discussion about this meeting?

23 A. I remember Deputy Chief Paiz asking me to attend a  
24 meeting, which I agreed to come to, and then she canceled it.

25 Q. And in July do you recall whether you had -- whether you

1 had the opportunity to go back to ROP after there was this new  
2 chain of command?

3 A. I was given ten days to decide to go back to ROP or to  
4 accept a permanent position in Burglary or go to the field.  
5 That's what my decision ultimately came down to, decide in ten  
6 days.

7 Q. Okay.

8 MR. VILLA: Your Honor, I'd like to show Ms. Welch  
9 Exhibit 6, which is stipulated, I believe. May I publish?

10 THE COURT: It's stipulated. No objection,  
11 Ms. Williams?

12 MS. WILLIAMS: Yes, sir.

13 THE COURT: Okay. You may publish.

14 Q. (By Mr. Villa) So I'm showing you what we've marked as  
15 Exhibit 6. This is an e-mail between yourself and Deputy  
16 Chief Paiz. Is that right?

17 A. Yes, sir.

18 Q. Okay. And the e-mail starts actually down here, July 9th.  
19 It says, "Terysa, I am so sorry this meeting took on a bigger  
20 meaning for everyone than was intended. I simply wanted your  
21 input to see if you wanted to go back to SID. You earned your  
22 spot on the team and since the Lieutenant and Commander are new  
23 people, I just wanted to know if you wanted to go back. That  
24 was it. If you want to stay in Burglary until Dave retires  
25 (rumor has it in September), then that is fine too. I just



1 wanted to check on ya. Sorry for the circus!"

2 Do you see that?

3 A. Yes.

4 Q. Do you know who she's referring to as Dave?

5 A. That's Dave Hubbard.

6 Q. So in July of 2010 Sergeant Hubbard is still there?

7 A. Still there.

8 Q. Now, fast forwarding to September of 2010, were you still  
9 in communication with Deputy Chief Paiz about your status in  
10 going back to ROP?

11 A. I don't know if I'm directly in communication anymore. I  
12 don't recall.

13 Q. Okay. Let me show you a document.

14 MR. VILLA: May I approach, Your Honor?

15 Okay. My understand is that Exhibit 8 is also  
16 stipulated, Your Honor.

17 THE COURT: Any objection to Exhibit 8, Ms. Williams?

18 MS. WILLIAMS: No, Your Honor.

19 THE COURT: All right. Exhibit 8 is admitted. No  
20 objection.

21 (Plaintiff's Exhibit 8 admitted into evidence.)

22 Q. (By Mr. Villa) Ms. Welch, I know this is a long time  
23 ago, so let me show you Exhibit 8. Is this a memo to Deputy  
24 Chief Paiz from you September 10th, 2010?

25 A. Yes.

1 Q. Okay. And it indicates here that in this first paragraph  
2 you're responding to Deputy Chief Paiz. "As you know a federal  
3 investigation into APD's treatment of me as an employee is  
4 underway."

5 So do you remember the EEOC was still investigating  
6 at this point in time?

7 A. Yes.

8 Q. Okay. And you talked about how comfortable you were  
9 returning to ROP now that Sergeant Hubbard is retired or  
10 retiring?

11 A. Yes.

12 Q. Okay. And in your paragraph here you state that you feel  
13 that it's absurd you've been displaced from the your rightfully  
14 earned position in ROP over 11 months because of the  
15 discriminatory and retaliatory behavior. Do you remember that?

16 THE COURT: Ms. Williams.

17 MS. WILLIAMS: Objection, Your Honor. The witness  
18 needs to testify. Not the attorney.

19 THE COURT: If can you just walk her through the  
20 letter, Mr. Villa. It's admitted as an exhibit, so in that way  
21 it's for the jury to see already. I'll sustain the objection.  
22 This is somewhat cumulative. Just ask the question.

23 MR. VILLA: Certainly, Your Honor.

24 Q. (By Mr. Villa) So let's try it this way, Ms. Welch. Can  
25 you explain why you felt it was absurd that you'd been

1 displaced from your position in ROP?

2 A. Yes. Because I'm the complainant that filed the Complaint  
3 about the EEOC, but I'm -- I'm removed for as long as I was  
4 removed for. It appears that I'm the one that's done something  
5 wrong. They're just left to stay at ROP as if there's no  
6 consequence. No changes are made over there. There's no  
7 remedy for the EEOC Complaint. There's no -- It makes it  
8 appear that I've done something wrong.

9 Q. Let me ask you about this statement you say here, that  
10 removing you caused you damage to your reputation at the height  
11 of your career. What do you mean by that?

12 A. This is exactly what I'm talking about. You remove me,  
13 and people -- Look, I can't talk about -- I'm not supposed to  
14 talk about the Complaint in IA or my EEOC Complaint. I'm  
15 removed. People think that I've done something wrong by that  
16 very act. They don't -- They don't get to hear my side of  
17 what's happened. They just assume that, Well, she must have  
18 done something really bad. She was taken out of her position  
19 and she's been put over in Burglary. She must have really  
20 messed up. That's damaging to me.

21 MS. WILLIAMS: Objection, Your Honor. This is  
22 speculative what she thinks other people are thinking, and we'd  
23 ask that it be stricken.

24 THE COURT: Mr. Villa.

25 MR. VILLA: Your Honor, I think that she can testify

1 about that with respect to her employment position because  
2 she's familiar with it. They can explore that on  
3 cross-examination.

4 THE COURT: Well, I think part of what we have here  
5 is what she experienced and how she interpreted the  
6 circumstances. So I'll allow it. I'm going to overrule the  
7 objection. The jury can consider the testimony against the law  
8 that I provide them in this particular area.

9 Mr. Villa.

10 Q. (By Mr. Villa) Now, in the final paragraph, you said  
11 that you wanted to have your attorney essentially communicate  
12 regarding these issues. Why did you want your attorney to  
13 communicate regarding these issues?

14 A. Because I didn't feel that APD had my interests at all in  
15 mind. They made that clear by leaving all the supervisors, all  
16 the actors in ROP just where they were to continue on just fine  
17 at ROP. Nobody had my interests in mind. Did anybody check on  
18 me in Burglary? "How are things down here? How are things  
19 going?" No, not one time.

20 Q. Let me ask you about another issue. At some point in  
21 time, you said you were asked to make a decision whether to go  
22 back to -- you were given ten days, you said Burglary, ROP, or  
23 the field. What did you ultimately decide to do?

24 A. I stayed in Burglary.

25 Q. And was there a point when you got your property that you

1 had in ROP returned back to you?

2 A. Yes, there was.

3 Q. Can you tell the jury about that?

4 A. I was asked to return the remainder of the ROP property  
5 that I had, so I took the time to box it up, a lot of it in its  
6 original boxes, returning it nicely and professionally back to  
7 the ROP team.

8 Q. Now, what about, did you have property that was in your  
9 cubicle at ROP?

10 A. Yes, I did.

11 Q. And how did you get that property back?

12 A. I sent the ROP property that I had to return with my  
13 Sergeant back to SID, and I asked him to grab my property at  
14 SID and bring it back to me. And he did. He brought back  
15 three boxes. He brought it back to me at Burglary.

16 Q. Was there anything unusual about the way the property was  
17 when you got it?

18 A. There was.

19 Q. Can you tell the jury about that.

20 A. It was just carelessly thrown into boxes and bins, and  
21 there was even a piece of wood in there. There was pieces of  
22 metal, broken radios. There was a piece of string that was  
23 tied into a noose. There was a picture of me waiving good-bye.  
24 And it was very carelessly thrown into these boxes and returned  
25 to me in a purposeful fashion, and I took offense to it.

1 Q. Now, you talk about a picture of you waiving good-bye. Do  
2 you know where that picture came from?

3 A. It was from a -- I don't know where it came from. It was  
4 from a trip, a work trip that we had taken, but I don't know  
5 where it came from.

6 Q. Now, there was a -- I think you testified about a noose  
7 being in there.

8 A. Correct.

9 Q. What's the significance of the noose?

10 A. Well, it could mean a lot of things to a lot of people,  
11 but to me it was put in there for a reason. It wasn't mine.  
12 It wasn't my property.

13 Q. That noose wasn't yours?

14 A. No.

15 Q. Now, was the noose the symbol or the logo for the ROP  
16 unit?

17 A. Well, I'm sure that's what they're going to say. It was a  
18 symbol at one time.

19 MS. WILLIAMS: Objection, Your Honor. She's  
20 speculating.

21 THE COURT: I'll sustain that.

22 Q. (By Mr. Villa) Okay. Let me ask you this. While you  
23 were in the ROP unit, did you guys use the noose as a logo?

24 A. We were instructed to stop doing that.

25 Q. Okay. Before you got instructed to stop doing that, was

1 it being used in ROP?

2 A. Some people used that in ROP.

3 Q. And were you instructed to stop before or after you left  
4 ROP?

5 A. I don't recall the timeline.

6 Q. Okay. And so now that you were leaving the ROP unit and  
7 staying in Burglary, in your property was a noose?

8 A. Correct.

9 Q. And that wasn't yours?

10 A. No.

11 MR. VILLA: May I approach, Your Honor?

12 THE COURT: You may.

13 MR. VILLA: Your Honor, I believe -- I stand  
14 corrected. I believe these are stipulated exhibits. This is  
15 87, 87a, b, d, and l.

16 THE COURT: Ms. Williams, any objection?

17 MS. WILLIAMS: No, Your Honor. We -- No.

18 THE COURT: All right. 87a, 87b, 87d, and 87l are  
19 admitted without objection.

20 (Plaintiff's Exhibits 87a, 87b, 87d, and 87l admitted  
21 into evidence.)

22 Q. (By Mr. Villa) Ms. Welch, I'm showing you Exhibit 87.  
23 Is that a photograph?

24 THE COURT: I'm sorry --

25 Q. (By Mr. Villa) Can you see --

1 THE COURT: -- I listed 87, a, b, c, d, and l. I  
2 didn't list 87. Is that also included?

3 MR. VILLA: There's also 87.

4 MS. WILLIAMS: Yes, we didn't object to these. We  
5 objected to duplicates that were included, but --

6 THE COURT: Okay. I just wanted to be clear.  
7 Exhibit 87 is admitted.

8 (Plaintiff's Exhibit 87 admitted into evidence.)

9 Q. (By Mr. Villa) Is that a picture of that box?

10 A. Yes.

11 Q. Do you know what's in that box?

12 A. That's part of my belongings.

13 Q. Let me show you a picture of 87l. That's 87l right there.  
14 I'm going to rotate it. What is that a picture of?

15 A. That's the picture of me waiving good-bye.

16 Q. And it appears to be inside something. Was it inside the  
17 box that's in 87?

18 A. Yes.

19 Q. Is that how you got it when you found it?

20 A. Yes.

21 Q. And then 87a, is that just a close-up picture of that  
22 picture of you waiving good-bye?

23 A. Correct.

24 Q. Okay. And 87b, just so we have the context, that's in  
25 this photo album, right?



1 A. Correct.

2 Q. And where was this photo album, if you know, before you  
3 got your property returned?

4 A. It was on my desk.

5 Q. Was it left open to this picture of you waiving good-bye  
6 when you left it on your desk?

7 A. No. I don't know where that picture came from.

8 Q. And finally 87d, what's this a picture of?

9 A. That's the random piece of wood that they threw in there  
10 and then the noose.

11 Q. Okay. And what's the significance to you of the noose  
12 being put in your box?

13 A. I just think it was an immature thing for them to throw in  
14 there. Threatening, in a way.

15 Q. Okay. Now, I want to change the subject a little bit.  
16 Let's talk about October of 2010. Did you have an occasion to  
17 be contacted about some disciplinary stuff?

18 A. Yes.

19 Q. Okay. Tell the jury how you found out about the  
20 disciplinary thing.

21 A. Sergeant Knox came to my office at Burglary.

22 Q. Who is Sergeant Knox?

23 A. He's an IA, Internal Affairs Sergeant.

24 Q. Is this still the time period when you're on the temporary  
25 status?

1 A. Yes.

2 Q. And did you still have your ROP equipment and ROP vehicle?

3 A. Yes, I did.

4 Q. Okay. So Sergeant Knox came to your office in Burglary.  
5 And what did he say?

6 A. He said -- He asked me what kind of truck I drove, work  
7 truck that I drove. And then he stated that he had an Internal  
8 Affairs case in which I was the target and he needed me to come  
9 to the Internal Affairs office and sign for a target letter.

10 Q. Okay.

11 MR. VILLA: May I just have a moment, Your Honor?

12 THE COURT: You may.

13 Q. (By Mr. Villa) Did he tell you the nature of the  
14 violation?

15 A. Yes.

16 Q. What did he tell you?

17 A. Somebody saw me buy beer.

18 Q. And in what context did they see you buying beer?

19 A. At the Walgreen's in Rio Rancho.

20 Q. Okay. Is that against policy?

21 A. Well, not specifically, but he said that I was in my work  
22 vehicle.

23 Q. Okay. So is there a policy against buying beer in your  
24 work vehicle?

25 A. There is.

1 Q. All right. Had you ever bought beer in your work vehicle  
2 before?

3 A. I have.

4 Q. Okay. Can you tell the jury why?

5 A. Well, because when you're in ROP and you're on call  
6 24/7/365, you do everything in your ROP vehicle.

7 Q. So when you heard from Sergeant Knox that that was the  
8 accusation against you, what did you tell Sergeant Knox?

9 A. That I would be over to sign for my target letter.

10 Q. I'm sorry?

11 A. That I would be over to sign for my target letter.

12 Q. Okay. Did you -- Well, let me show you Exhibit 21. This  
13 has been stipulated to. This is -- There's Exhibit 21. This  
14 is an Albuquerque Police Department general order. Can you  
15 read what that General Order is?

16 A. The numbers?

17 Q. Sure, the 1-04-7. Would you just read that for the jury.

18 A. Sure. It's a sanction 6. That's what the numbers in the  
19 bracket mean. And it says, "Personnel shall not bring into any  
20 police facility or city vehicle, alcoholic beverages, for any  
21 purpose, except in the performance of their official duties."

22 Q. Okay. You mentioned something about a sanction 6. What  
23 is a sanction 6?

24 A. So in our disciplinary system, we have a sanction chart,  
25 it's called. The most severe discipline sanction is a 1, and

1 that would be an offense that you would be terminated for, and  
2 the lowest level on the sanction list would be a sanction 7.  
3 So this would be a sanction 6, between a 1 and a 7 on that  
4 chart. It's according to the seriousness of the offense.

5 Q. So what does a sanction 6 call for in terms of discipline?

6 A. Well, without factoring in any progressive discipline,  
7 that would be usually a written reprimand.

8 Q. What is a progressive discipline?

9 A. Progressive discipline is if you've done it multiple  
10 times.

11 Q. And when you say "a written reprimand," what do you mean?

12 A. A written reprimand, you know, they write you -- it's a  
13 letter, basically, that outlines what you've done wrong. It  
14 goes in your permanent employee file, and if you violate that  
15 again, well, then it gets a lot more serious for you.

16 Q. Did you have any discussion with Sergeant Knox about  
17 whether you would receive a written reprimand?

18 A. When I went in to sign for my target letter, I told him I  
19 would just sign for the written reprimand at the time that I  
20 signed for the target letter.

21 Q. When you say you'll just sign for the written reprimand,  
22 what does that mean?

23 A. Meaning I'll just take it -- take my hit, take my  
24 spanking.

25 Q. Why were you willing to accept it?

1 A. Because it's a sanction 6. It's not even grievable. It's  
2 not even -- It's not -- Basically, to me, you know, that's not  
3 worth fighting about, it's not worth the stress of going  
4 through an IA interview. Why are they sending it to IA in the  
5 first place. This is just to get it over with, you know.

6 Q. And Sergeant Knox, he was in IA?

7 A. Yes, he was.

8 Q. And when you told Sergeant Knox that you would accept the  
9 written reprimand, what did he say?

10 A. He said, "No, no, that's not the way it works. The  
11 investigation is ordered from the top. And you have to go  
12 through the formalities."

13 Q. He said the investigation was ordered from the top?

14 A. Yes.

15 MS. WILLIAMS: Objection, Your Honor. Hearsay.

16 Q. (By Mr. Villa) Well, I think that's -- Again, Your  
17 Honor, this is a Sergeant in APD saying this.

18 THE COURT: Well, it is hearsay. Are you offering it  
19 for the truth of the matter asserted, Mr. Villa?

20 MR. VILLA: I think I'm offering it as an admission  
21 of a party opponent, Your Honor, so it would be defined out of  
22 hearsay.

23 THE COURT: Okay. I'll admit it.

24 Q. (By Mr. Villa) So did he explain to you what he meant  
25 when he said it was ordered from the top?

1 A. No. I didn't ask.

2 Q. All right. And you're now -- being a Lieutenant, have you  
3 been trained in how to give -- whether you're able to give  
4 written reprimands for level 6 violations for people you  
5 supervise?

6 MS. WILLIAMS: Objection, Your Honor. Relevance.

7 THE COURT: What was the objection?

8 MS. WILLIAMS: Relevance. I don't know if the  
9 training's trained or not.

10 THE COURT: Mr. Villa.

11 MR. VILLA: Well, the relevance, Your Honor, is to  
12 how it was handled as going through IA as opposed to a written  
13 reprimand.

14 THE COURT: Okay. I'll overrule it.

15 Q. (By Mr. Villa) Have you been trained in how to give  
16 written reprimands when you were either a Sergeant or a  
17 Lieutenant?

18 A. Yes.

19 Q. Are those things that have to go through Internal Affairs  
20 according to your training?

21 A. No, those don't go through Internal Affairs.

22 Q. So if you were a Sergeant or a Lieutenant, are you, I  
23 believe, able to issue a written reprimand?

24 A. I have issued those.

25 Q. Now, during this conversation with Sergeant Knox, did he

1 tell you how it was that it came to pass that you'd been  
2 accused of this?

3 A. Very briefly.

4 Q. Did he tell you who accused you?

5 A. He did.

6 Q. Who was it?

7 A. He said that Kevin Gagne saw me buy beer.

8 Q. That Kevin Gagne said it?

9 A. Uh-huh.

10 Q. And --

11 THE COURT: Is that a "yes"?

12 Q. (By Mr. Villa) -- did he tell you where he had seen you?

13 THE COURT: Is that a "yes," Ms. Welch?

14 THE WITNESS: Yes, sir.

15 Q. (By Mr. Villa) Sorry about that. Did he tell you where  
16 you were seen buying beer?

17 A. At the Walgreen's in north Rio Rancho.

18 Q. What's the significance of that Walgreen's to you?

19 A. It's the last stop before my house. I stop there for  
20 miscellaneous goods.

21 Q. Okay. You'd been to that Walgreen's before?

22 A. Yes, lots of times.

23 Q. So, you then are given a target letter, you said, from  
24 Sergeant Knox regarding this alcohol violation.

25 A. Correct.

1 MR. VILLA: Your Honor, I'm going to show Exhibit 98,  
2 which has been stipulated.

3 THE COURT: All right. You may proceed. It's been  
4 stipulated.

5 Q. (By Mr. Villa) Ms. Welch, this is Plaintiff's Exhibit  
6 98, dated October 26, 2010, indicating it was hand-delivered.  
7 Is this the target letter that you're talking about?

8 A. Yes, it is.

9 Q. Now, it says it's issued by Raymond Schultz, but it's  
10 signed by Lieutenant Mike Miller and signed by you, but I think  
11 you said it was Sergeant Knox who gave it to you.

12 A. He's just the representative that handed it to me in IA.

13 Q. Okay. Got it. Okay. Now, did you attend an interview  
14 conducted by Sergeant Knox for this Internal Affairs  
15 investigation?

16 A. I attended three interviews.

17 Q. Okay. Let's talk about the first interview. Tell us  
18 about what happened.

19 A. He asked me a series of questions about if I had  
20 remembered a specific date, which was almost three weeks prior.  
21 I had looked at my calendar at work to try to recall anything  
22 particular on that date, if I had, you know, court that day or  
23 something like that. I didn't remember anything particular  
24 about the date that he said it happened on. Nothing stood out  
25 in my mind about that date, prior to going into the interview.



1 And I stated that in my interview.

2 He had told me that he had video and photographs of  
3 the incident, but he wouldn't show them to me, which was  
4 confusing for me. It caused me to be cautious and wondered why  
5 he -- why he would not just show that to me. And so the whole  
6 feeling of what was going on started causing me to be very  
7 concerned and a little suspicious about what really is  
8 happening here, what is the purpose of this. This is not --  
9 Something's wrong.

10 Q. Were you at all concerned about the fact that he told you  
11 Kevin Gagne had reported you?

12 A. I was very concerned.

13 Q. Why were you concerned?

14 A. Well, because Kevin doesn't like me, and he has reason to  
15 cause me trouble.

16 Q. Was he still in the ROP unit at this time?

17 A. Oh, yeah.

18 Q. At any point during that first interview with Sergeant  
19 Knox, did you lie to him?

20 A. I did not lie to him.

21 Q. Okay. Were you able to remember the incident of buying  
22 alcohol?

23 A. No.

24 Q. Why not?

25 A. Because I am not new at buying alcohol. There's nothing

1 exciting to me about buying alcohol. There's just -- It's not  
2 a memorable event for me. You know?

3 Q. In that first interview, did you discuss at all whether  
4 you had done it previously in your ROP vehicle?

5 A. I told him I had done that previously. I told him I'd  
6 done that before. "I admit that that was probably me. I don't  
7 particularly remember that date. I've tried to find something  
8 that could refresh my memory. May I see the video? May I see  
9 the photographs that you say you have?"

10 "No."

11 Q. Now, why were you asking him all these questions?  
12 Couldn't you just provide your answers and be done with it?

13 A. I tried to provide my answers and be done with it. He  
14 kept pushing me, and he started questioning if there was  
15 something wrong with my memory and have I testified in court  
16 and do I have problems testifying. And I started feeling as if  
17 he thought I was lying, but I was actually refusing to lie to  
18 him and say I remembered something that I didn't remember.

19 Q. Now, you said there was a second interview. Do you  
20 remember when the second interview occurred?

21 A. They were all about a month apart, roughly.

22 Q. Okay.

23 A. One was in October, one was in November, one was in  
24 December.

25 Q. Aside from these interviews, did Sergeant Knox do anything

1 else unusual in the course of this investigation?

2 A. He did.

3 Q. What did he do?

4 A. He got into an argument with my union rep who had pointed  
5 out to him that he was using the wrong ground rules. We  
6 have -- We have ground rules for civilian interviews, and we  
7 have ground rules for sworn officer interviews. And my union  
8 rep was doing his job and pointed out to Sergeant Knox that you  
9 can't -- "You're using civilian ground rules, Sergeant Knox,"  
10 and it angered him and maybe embarrassed him, I don't know, and  
11 he told him that he wasn't allowed to interrupt anymore. By  
12 the end of the interview, he had thrown him out of his office.

13 Q. And then outside of the interview process, did Sergeant  
14 Knox do anything unusual?

15 A. Yeah. He continued to come up physically to the Burglary  
16 floor to tell me he wanted an additional interview, which was  
17 causing me embarrassment because everybody knows he's an IA  
18 Sergeant, and, look, it's my personal business if I'm in  
19 trouble at work. Okay. I get it. I'll be responsible for the  
20 things that I do wrong, but you don't need to advertise it to  
21 my coworkers, you know. I asked him to stop doing it. "You  
22 have my phone number, correct, Sarge?"

23 "Yes."

24 "Please call me."

25 He kept coming up to the Burglary floor and finding

1 me in my office. You know, I don't need that happening. "You  
2 know my Burglary Sergeant's number, you know my cell phone  
3 number. Please call me. I'll answer the phone. I'll come  
4 in." He kept coming up.

5 Q. What's the normal way that you get notified about an  
6 Internal Affairs meeting?

7 MS. WILLIAMS: Objection. Lack of foundation.

8 Q. (By Mr. Villa) Had you ever been -- I'll strike the  
9 question.

10 THE COURT: I'll sustain the objection.

11 Q. (By Mr. Villa) Had you ever been notified before that  
12 you needed to do an Internal Affairs interview?

13 A. Yes.

14 Q. And how were you notified in those processes?

15 A. Either by certified letter and then you call in or just by  
16 a phone call.

17 Q. Now, you said the three interviews were about three months  
18 apart. So one was in October. The next one was when?

19 A. November.

20 Q. And the third one?

21 A. At the end of December, around Christmas.

22 Q. Around Christmastime. Were the -- Did the other two  
23 interviews go any differently than the first?

24 A. No. It was the same tone, almost the same questions. The  
25 third interview he finally showed me a still photo of what

1 looked like a store surveillance video and a receipt.

2 Q. And that was related to the purchase of alcohol at  
3 Walgreen's?

4 A. Correct.

5 Q. Okay. During any of these interviews, did you ever lie to  
6 him?

7 A. Did I ever?

8 Q. Lie to him.

9 A. No.

10 Q. Did you ever admit that you transported alcohol in your  
11 ROP vehicle?

12 A. I told him it was absolutely possible, and I would take  
13 the responsibility for that. I had no problem at any point  
14 taking the responsibility for the violation.

15 Q. Now, later in the course of this Internal Affairs  
16 investigation, were you accused of other violations of policy?

17 A. Yes.

18 Q. And let me show you what's already been stipulated.

19 MR. VILLA: And I'll publish to the jury, Your Honor,  
20 Exhibit 94.

21 THE COURT: As to 94, no objections, Ms. Williams?

22 MS. WILLIAMS: Yes, Your Honor, we have stipulated.

23 THE COURT: All right. It's admitted. No objection.

24 (Plaintiff's Exhibit 94 admitted into evidence.)

25 Q. (By Mr. Villa) So this is 94. And I'll show you the

1 top. It's the PERSONNEL CODE OF CONDUCT. I'm going to flip  
2 over to W. This says "Personnel shall truthfully answer all  
3 questions specifically directed to them," correct?

4 A. Correct.

5 Q. So were you accused of this after you'd gone through these  
6 interviews with Sergeant Knox?

7 A. I was.

8 Q. And that, of course, is a sanction of what level?

9 A. 1.

10 Q. And what's the discipline called for for a sanction 1?

11 A. Termination.

12 Q. And I'm turning to the next page, 1-04-6. Were you  
13 accused of this, "Personnel shall not knowingly interfere with  
14 a criminal or administrative investigation"?

15 A. Yes, I was.

16 Q. And was that related to the interviews that you gave with  
17 Sergeant Knox?

18 A. Yes, it was.

19 Q. And this has a sanction level of what amount?

20 A. A 5.

21 Q. What does a 5 call for?

22 A. Well, it's a days off, but when you combine it with  
23 everything else, it puts it way up there.

24 Q. Following your --

25 THE COURT: Let me just interrupt. Mr. Villa, how

1 many pages are associated with 94?

2 MR. VILLA: Three, Your Honor.

3 THE COURT: All right. Would you please staple those  
4 so that they stay together.

5 MR. VILLA: Sure, Your Honor.

6 THE COURT: As well as the other exhibits that have  
7 been admitted. If they're multi-page, make sure they're  
8 attached.

9 MR. VILLA: We'll make sure they're stapled, Your  
10 Honor.

11 THE COURT: The items that are admitted, are they  
12 going on the table in front of the bench?

13 MR. VILLA: Yes, they are.

14 Q. (By Mr. Villa) Now, the other thing I just want to show  
15 you, this is part of the original violation, Plaintiff's  
16 Exhibit 95. It's already been stipulated to.

17 MS. WILLIAMS: Yes. We have already stipulated.

18 MR. VILLA: That is a three-page document, Your  
19 Honor, and it is the assigned take-home vehicle policy.

20 THE COURT: All right. 95 is admitted without  
21 objection.

22 (Plaintiff's Exhibit 95 admitted into evidence.)

23 Q. (By Mr. Villa) I'm going to show you part B, "Unmarked  
24 vehicles are for official purposes only." That is part of the  
25 accusation for using the vehicle to buy alcohol, right?

1 A. Yes.

2 Q. Now, once Sergeant Knox had prepared his findings from the  
3 Internal Affairs, do you know who first reviewed his findings?

4 A. I believe it was Doug West.

5 Q. And that's the same Doug West that you originally reported  
6 your Complaint to back in 2009, your EEOC Complaint?

7 A. Correct.

8 Q. Okay. And do you know what Doug West's recommendations  
9 were?

10 A. Yes. He recommended that I be terminated.

11 Q. Okay. Did you challenge that recommendation?

12 A. No. No.

13 Q. Was it reviewed subsequently by another Deputy Chief?

14 A. It was. Deputy Chief Paul Feist.

15 Q. Okay. And in Lieutenant West's recommendation, did he  
16 recommend your termination based on the fact that you had not  
17 answered questions truthfully?

18 A. He did not find that I did not answer truthfully.

19 Q. And I'm talking specifically about Lieutenant West, not  
20 Chief Feist. So Lieutenant West, who recommended your  
21 termination, did he make findings about whether you answered  
22 truthfully?

23 A. Yes. He sustained that.

24 Q. So he found that you had answered not truthfully?

25 A. Correct.



1 Q. Okay. And that's -- Again, that's the same Lieutenant  
2 West who told you you were going to keep your EEOC claim  
3 confidential?

4 A. That's right.

5 MR. VILLA: May I approach, Your Honor?

6 THE COURT: You may.

7 Q. (By Mr. Villa) Ms. Welch, I'm going to show you a copy  
8 of Exhibit 99 and just ask you, is that, as far as you know,  
9 Lieutenant West's findings on your case?

10 A. Yes.

11 Q. Okay. Thank you.

12 MR. VILLA: Your Honor, I'm not offering it at this  
13 time. It's just for future use.

14 THE COURT: Well, it's not admitted. Then you may  
15 retrieve it from the table.

16 MR. VILLA: Oh, sure.

17 Q. (By Mr. Villa) Now, then it got reviewed by Deputy Chief  
18 Feist, correct?

19 A. Correct.

20 Q. And did Deputy Chief Feist sustain the finding that you  
21 had been untruthful?

22 A. No, he did not.

23 Q. What was his recommendation with respect to your  
24 discipline?

25 A. I believe he recommended to Chief Schultz an 80-hour

1 suspension and loss of take-home vehicle for 14 days.

2 Q. Okay. So let's go a little bit forward and -- well, a  
3 little bit backwards in time. Was Deputy Chief Feist -- what  
4 was his position at the time that he reviewed your Internal  
5 Affairs investigation?

6 A. He was then my current Deputy Chief.

7 Q. Okay. So had he taken over for Deputy Chief Paiz?

8 A. I'm not sure, but I believe so. It was either that or he  
9 was in charge of Property Crimes.

10 Q. Okay.

11 A. I'm confused about that.

12 THE COURT: Mr. Villa, just one moment.

13 MR. VILLA: Yes.

14 THE COURT: You may discuss with counsel.

15 Ladies and gentlemen, we're 20 minutes after four.  
16 We still have some ways to go, but I would invite you to just  
17 stand and stretch as you like as we sort of push through this  
18 phase. As a matter of fact, I think I will stand.

19 Mr. Villa, just a rough estimate about how much  
20 longer with this witness?

21 MR. VILLA: I think that I'm just about done, Your  
22 Honor. We're pretty close. Maybe 20 more minutes.

23 THE COURT: All right. Again, just as a rough  
24 estimate.

25 MR. VILLA: Thank you, Your Honor.

1 THE COURT: You may continue.

2 MR. VILLA: So may I approach the witness?

3 THE COURT: You may.

4 Q. (By Mr. Villa) I'm going to show you what I've marked as  
5 Plaintiff's Exhibit 75. Is that Deputy Chief Feist's  
6 recommendations on your discipline?

7 A. Yes.

8 Q. Have you seen that before?

9 A. I believe so.

10 Q. Will you look at the back page and see what it says about  
11 what he recommended for your discipline?

12 A. 80 hours' suspension and a 14-day suspension --

13 THE COURT: Well, before --

14 MR. VILLA: I'm sorry?

15 THE COURT: Read it to yourself. Well, hold on.

16 Ms. Williams, as to this exhibit?

17 MS. WILLIAMS: We do not stipulate to this exhibit,  
18 Your Honor, and we would move that her answer be stricken until  
19 it's -- this is one you held in abeyance.

20 THE COURT: And this is 75?

21 MS. WILLIAMS: Excuse me?

22 MR. VILLA: 75.

23 THE COURT: 75? Right. So, ladies and gentlemen,  
24 you heard at least some testimony describing what's in this.  
25 I'll just ask you to disregard what you heard to the best that

1 you can until the item is admitted, if it's admitted.

2 Q. (By Mr. Villa) You saw this document before?

3 A. Yes, I have.

4 Q. Okay. And --

5 MR. VILLA: Your Honor, I won't offer it at this  
6 time. I'll use it with another witness.

7 Q. (By Mr. Villa) Ultimately, was your -- did Chief Schultz  
8 review Deputy Chief Feist's recommendation?

9 A. I believe he did, yes.

10 Q. And did he decide to impose discipline on you?

11 A. He did.

12 Q. Okay. And this is -- Do you remember what time this  
13 occurred? What month? What year?

14 A. 2010. I'm not sure of the month.

15 Q. Okay. Let me show you Exhibit 100.

16 MR. VILLA: Your Honor, this one's stipulated to,  
17 Exhibit 100.

18 THE COURT: No objection, Ms. Williams?

19 MS. WILLIAMS: No, Your Honor. We stipulated before  
20 trial.

21 THE COURT: 100 is admitted.

22 (Plaintiff's Exhibit 100 admitted into evidence.)

23 Q. (By Mr. Villa) Ms. Welch, is this the notice that you  
24 received from Chief Schultz regarding your final discipline?

25 A. It's his predisciplinary notice, so this would have been

1 before my Loudermill with him.

2 Q. Okay. And that was January 20th, 2011?

3 A. Yes.

4 Q. And you had a hearing with the Chief February 5th, 2011?

5 A. Yes.

6 Q. And was it after that point in time that he ultimately  
7 imposed the discipline that you talked about?

8 A. Correct.

9 Q. Okay. What was the discipline that he imposed?

10 A. He imposed a 40-hour suspension and a two-week loss of  
11 take-home car, and then I had to serve actually 16 hours of  
12 that. He held the rest in abeyance.

13 Q. Okay. And at that point in time, was the Chief aware of  
14 the EEOC investigation?

15 A. Yes, he was.

16 Q. Okay.

17 MR. VILLA: Your Honor, these are stipulated to.  
18 This is Exhibits -- Plaintiff's Exhibits 102 and 103.

19 THE COURT: Ms. Williams, no objection?

20 MS. WILLIAMS: No, Your Honor. We stipulated prior  
21 to trial.

22 Q. (By Mr. Villa) So, Ms. Welch I'm showing you  
23 Exhibit 102. This is the discipline from February 10th, 2011.  
24 Is that right?

25 A. Yes.

1 Q. Okay. And turn to the last page here, and it talks  
2 about -- Let's see. Oh, it's signed by you and dated  
3 February 22nd, 2011. Correct?

4 A. Yes.

5 Q. And so now let me show you 103.

6 THE COURT: Just as to 102, how many pages are there?

7 MR. VILLA: Two pages, Your Honor.

8 Q. Exhibit 103 is the FINAL DISCIPLINE TO BE IMPOSED.  
9 Correct?

10 A. Correct.

11 Q. And it says -- Well, excuse me. This is signed, printed  
12 by Raymond Schultz as Chief, right?

13 A. Yes.

14 Q. Okay. And it talks about a hearing held on February 2nd,  
15 2011. That was the one with him, right?

16 A. Correct.

17 Q. Okay. And he says, "I find that officer" -- right here --  
18 "I find that officer Welch did in fact violent department  
19 operating procedures by purchasing alcohol on October 12th,  
20 2010, while in her assigned vehicle." Right?

21 MS. WILLIAMS: Objection, Your Honor. Leading.

22 MR. VILLA: I'm just going over the exhibit, Your  
23 Honor.

24 THE COURT: I understand. Just walk it through with  
25 the witness.

1 MR. VILLA: Okay.

2 THE COURT: The exhibit is admitted. The jury will  
3 be able to read it.

4 Q. (By Mr. Villa) Okay. In here did he determine anywhere  
5 that you had lied in the Internal Affairs investigation?

6 A. No, he did not.

7 Q. All right. And the final discipline, you actually did  
8 serve the 16-hour suspension?

9 A. I did.

10 Q. Okay. Now, did you file a grievance with the City to  
11 challenge this discipline?

12 A. I did.

13 Q. Do you know whether your discipline was reported to the  
14 New Mexico Law Enforcement Academy?

15 A. It was reported.

16 MR. VILLA: Your Honor, I'm going to show Ms. Welch  
17 Defendant's Exhibit E, which the parties have stipulated to.

18 THE COURT: Which exhibit is that again?

19 MR. VILLA: Defendant's Exhibit E.

20 THE COURT: E. All right. E is admitted. No  
21 objection.

22 (Defendant's Exhibit E admitted into evidence.)

23 Q. (By Mr. Villa) Ms. Welch, I'm showing you a letter of  
24 March 25th, 2011, to Michael Valverde of the NMLEA. Is that  
25 correct?

1 A. Correct.

2 Q. And what is the NMLEA?

3 A. New Mexico Law Enforcement Academy, which is the entity  
4 which is responsible for giving police officers their license  
5 to be police officers.

6 Q. It says here on the second page that the letter was issued  
7 by Chief Schultz, but it's signed by Lieutenant Miller,  
8 correct?

9 A. Correct.

10 Q. Okay. And in the first page on Exhibit -- excuse me --  
11 paragraph 1 here it says that these violations were sustained.  
12 "Personnel shall obey, and to the best of their abilities,  
13 protect the rights of the people as provided in the  
14 Constitution of the United States."

15 Do you see that?

16 A. I see that.

17 Q. Were you ever accused in the Internal Affairs process of  
18 this paragraph 1?

19 A. Never.

20 Q. Was this paragraph 1 ever sustained in the Internal  
21 Affairs process that you went through?

22 A. Never.

23 Q. Do you have any idea why they would send a letter saying  
24 you violated this to the NMLEA?

25 A. I have no idea.



1 Q. Now, number 2, "Personnel shall not commit or omit any  
2 such acts which constitute a violation of the rules," and they  
3 found you violated the rules, right, for transporting alcohol?

4 A. Correct.

5 Q. The next one is what I showed you earlier, "Personnel  
6 shall not knowingly interfere with criminal or administrative  
7 investigations." When that was going through the review  
8 process, did Deputy Chief Feist sustain that violation?

9 A. He did not sustain that.

10 Q. So he reviewed it and didn't sustain it?

11 A. Nope.

12 Q. And Chief Schultz didn't sustain it either, did he?

13 A. No, he did not.

14 Q. So do you have any idea why they would send a letter to  
15 the Law Enforcement Academy after Chief Schultz's imposition of  
16 discipline that accused you of doing something that wasn't  
17 sustained?

18 A. It is not accurate.

19 Q. And you don't know why it was sent?

20 A. I don't.

21 MS. WILLIAMS: Your Honor, there's a lack of  
22 foundation here and we're going to object for that.

23 THE COURT: Objection, foundation?

24 MR. VILLA: Well, I've asked if she, knows and she  
25 said she doesn't know.

1 THE COURT: We're on Exhibit E?

2 MR. VILLA: Yes, Your Honor.

3 THE COURT: This has been admitted.

4 MR. VILLA: It has. It's a defendant's exhibit.

5 THE COURT: Without objection?

6 MR. VILLA: Without objection.

7 MS. WILLIAMS: The line of questioning about what is  
8 reported, there's a lack of foundation to that question.

9 THE COURT: To the extent the witness knows,  
10 Mr. Villa, you can establish that, but I think she already has  
11 testified that she doesn't know.

12 MR. VILLA: I think I agree, Your Honor, she doesn't  
13 know, so I'm going to move on to my next question.

14 THE COURT: All right. Just move on.

15 Q. (By Mr. Villa) Now, number 4, "Personnel shall not bring  
16 into any police facility...alcohol." That was sustained,  
17 right?

18 A. Yes.

19 Q. And number 5, employees shall not drive an unmarked  
20 vehicle except for official purposes. That was sustained?

21 A. Yes.

22 Q. Okay. So this is the letter that got sent to the NMLEA?

23 A. Yes.

24 Q. And --

25 MR. VILLA: Your Honor, I'm going to show Ms. Welch

1 Exhibit F, which is been stipulated by all parties. It's  
2 Defendant's Exhibit F.

3 THE COURT: All right. No objection. It's admitted.  
4 (Defendant's Exhibit F admitted into evidence.)

5 Q. (By Mr. Villa) Ms. Welch, is this a letter you received  
6 from the NMLEA in response to the letter that I just showed  
7 you?

8 A. It is.

9 Q. And tell the jury what the letter indicates.

10 A. It indicates that the previous document that you just  
11 showed along with this letter is part of my permanent file and  
12 it always will be.

13 Q. Did the NMLEA ultimately take action on your license?

14 A. They didn't, but it will be considered if anything else  
15 were to happen with me.

16 Q. And do you know whether your name was submitted along with  
17 other APD officers to the NMLEA at this time?

18 A. It was.

19 Q. Did the Albuquerque Journal publish an article regarding  
20 that?

21 A. Yes, it did.

22 MR. VILLA: Your Honor, I want to show the jury  
23 Exhibit 11, which I believe the Court has admitted pretrial.

24 MS. WILLIAMS: Your Honor, that's true, it was  
25 admitted over objection in a motion in limine.

1 THE COURT: It was admitted over objection, so you  
2 may proceed, Mr. Villa.

3 Q. (By Mr. Villa) I'm showing you Exhibit Number 11. Is  
4 that the article that refers to the list of officers who were  
5 sent to NMLEA?

6 A. Yes.

7 Q. And were you included on that list as a result of the  
8 letters I just showed you?

9 A. I was.

10 Q. And do you know if this article was available online?

11 A. Yes, it was.

12 Q. And was there something that -- was there any links to the  
13 online article?

14 A. Yes, there were links.

15 MR. VILLA: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 Q. (By Mr. Villa) I'm showing you what I've marked as  
18 Plaintiff's Exhibit 97. Is that document a list of officers?

19 THE COURT: Mr. Villa, I'll ask you not to describe  
20 the contents of the exhibit until it's been admitted.

21 MR. VILLA: Oh, sure, Your Honor.

22 THE COURT: Has this been admitted?

23 MR. VILLA: It has not yet been admitted.

24 THE COURT: Okay. Please go through the steps.

25 Q. (By Mr. Villa) Ms. Welch, can you tell me whether there

1 was a link on the online Albuquerque Journal article to what  
2 is in Exhibit 97?

3 A. There was.

4 Q. Okay.

5 MR. VILLA: And, Your Honor, I would move to admit  
6 Exhibit 97.

7 THE COURT: Ms. Williams?

8 MS. WILLIAMS: Your Honor, we object. That's just  
9 one page of the list of 115 officers, so I don't know -- so  
10 it's not complete, and I -- I don't know that there's a  
11 foundation. The article doesn't show a link.

12 THE COURT: All right.

13 MS. WILLIAMS: Foundation and the other objections  
14 that we made in motions hearings.

15 THE COURT: Okay. Now, as to the foundation  
16 objection, Mr. Villa, you can try and see if you can establish  
17 the foundation through this witness.

18 Q. (By Mr. Villa) Ms. Welch, did you access the link that  
19 led to a portion of what you see there on Exhibit 97?

20 A. Yes, I did.

21 Q. Okay. And so does Exhibit 97 fairly and accurately  
22 represent at least the first page of the link that you accessed  
23 to the online article?

24 A. It does.

25 MR. VILLA: Your Honor, I think based on that I would

1 argue the foundation's been established.

2 THE COURT: Well, okay. As to completeness or  
3 incompleteness about the document and its association with the  
4 link itself?

5 MR. VILLA: Well, I think she testified it's -- it is  
6 the link. The reason we didn't attach the full list is just to  
7 reduce the number of pages, and the relevant portion is on that  
8 first page.

9 THE COURT: All right. 97 is admitted.

10 (Plaintiff's Exhibit 97 admitted into evidence.)

11 Q. (By Mr. Villa) Ms. Welch, is that 97 a list of officers,  
12 part of the 115 officers on this sanction list that's  
13 discussed in the article?

14 A. Yes, it is.

15 Q. Is your name on that list?

16 A. It is.

17 Q. And are there other APD officers on that list, as well?

18 A. There are other names, yes.

19 Q. Including, as the article points out here, Levi Chavez?

20 A. Yes.

21 Q. Now, after the disciplinary process that you went through  
22 at around March of 2011, what happened with respect to your  
23 position in Burglary or ROP?

24 A. You mean what was the final outcome?

25 Q. Yes. Not with respect to the discipline, but I mean with

1 whether you stayed in Burglary or went back to ROP.

2 A. I ultimately stayed in Burglary.

3 MR. VILLA: Your Honor, I'm going to show the jury  
4 what's already been stipulated to, Exhibit 82 and Exhibit 84.

5 THE COURT: All right. Ms. Williams, no objection as  
6 to these two exhibits?

7 MS. WILLIAMS: No, Your Honor. We stipulated them  
8 for trial.

9 THE COURT: Okay. They're admitted.

10 (Plaintiff's Exhibits 82 and 84 admitted into evidence.)

11 Q. (By Mr. Villa) Ms. Welch, this is a letter from -- a  
12 memo from Deputy Chief Feist to you dated March 14th, 2011,  
13 correct?

14 A. Correct.

15 Q. And what is the memo saying?

16 A. It's telling me that I'm going to be transferred from my  
17 TDY in Burglary to ROP.

18 Q. And did you ultimately respond to Deputy Chief Feist about  
19 that?

20 A. Yes, I did.

21 Q. Okay. Let me show you 84. There's 84. Is this an e-mail  
22 from Deputy Chief Feist to you?

23 A. Yes, it is.

24 Q. What does this e-mail say?

25 A. It's from Deputy Chief Feist to me telling me that I have

1 ten days to make a choice whether I want to remain in Burglary  
2 to be my permanent assignment or return to ROP or go to the  
3 field, which means put a uniform back on.

4 Q. And what did you ultimately decide to do?

5 A. I decided to stay in Burglary.

6 Q. And why did you decide to stay in Burglary and not go back  
7 to ROP?

8 A. For a number of reasons. I didn't feel like I could  
9 recover with my teammates at that point. I had been gone for  
10 well over a year. There had been opinions that had been made  
11 clear through other people about my return, that there were new  
12 people over there that didn't know me anymore that had come in  
13 since my absence. I felt that by the Department removing me  
14 for that amount of time it made it look like I had done  
15 something wrong, and I didn't feel like I would have a fair  
16 opportunity over there to return.

17 Q. So once you made the decision, then, to stay in Burglary,  
18 did you seek to promote to Sergeant?

19 A. I went back to Burglary, and then I eventually did decide  
20 that, you know, with some encouragement, to find a different  
21 path, so, yeah, I decided to start taking the path of  
22 promotion.

23 Q. Did you ultimately succeed and get promoted to Sergeant?

24 A. Ultimately, I did.

25 Q. When was that?



1 A. That was in 2013.

2 Q. So getting back to some of your testimony from this  
3 morning, was it your ultimate goal -- Well, let me ask you this  
4 way. I should have asked you this question first. I'm getting  
5 a little tired. When you got promoted to Sergeant, what  
6 position were you a Sergeant in?

7 A. The field. Field Services. Uniform.

8 Q. Okay. So you were over patrol officers?

9 A. Correct.

10 Q. Was that what your ultimate goal was when you got into  
11 ROP?

12 A. No.

13 Q. In order to promote to Sergeant, go through the process,  
14 did you have to write a letter to Chief Schultz?

15 A. Yes, I did.

16 Q. I'm going to show you what has already been stipulated as  
17 Exhibit 105.

18 THE COURT: No objection?

19 MS. WILLIAMS: No, sir.

20 THE COURT: 105's admitted.

21 (Plaintiff's Exhibit 105 admitted into evidence.)

22 Q. (By Mr. Villa) This is Exhibit 105. Is this the letter  
23 that you wrote to Chief Schultz in order to promote to  
24 Sergeant -- or to start the process?

25 A. Yes, it was.

1 Q. Why did you have to write a letter to Chief Schultz in  
2 order to be able to start the Sergeant testing process?

3 A. Because of the discipline that I had received.

4 Q. The discipline that we just talked about with the alcohol  
5 violation?

6 A. Correct.

7 Q. And if you had received a written reprimand for the  
8 alcohol violation, would you have to write this letter?

9 A. No.

10 Q. Why not?

11 A. Because it wasn't -- wouldn't have been serious enough.

12 Q. Can you tell the jury a little bit, what's involved in the  
13 promotion process for a Sergeant?

14 A. Sure. You begin with a written test. If you score a 70  
15 percent or higher on the written test, then you go to what's  
16 called an Assessment Center. And at the Assessment Center, you  
17 have a panel of people brought in from outside of APD that  
18 don't know you. Your name is never divulged. You go through a  
19 series of scenarios that change every time. You don't know  
20 what they're going to be ahead of time. And they -- the panel  
21 of people, they grade you on how you do in these different  
22 scenarios. It can be anything from, say, a critical incident  
23 to how well you organize paperwork, to how well you write  
24 memos, to, you know, how well you counsel a subordinate, things  
25 like that. Things that a Sergeant would have to do in their

1 duties.

2 Q. And so you then became a Sergeant in the field. I think  
3 you said March 7, 2013. Then did you go through the Lieutenant  
4 promotional process?

5 A. Yes, I did.

6 Q. What did you have to do to promote to Lieutenant?

7 A. Same sort of process. You start with a written test. If  
8 you pass that, then you go to an Assessment Center also, but  
9 it's a much higher level Assessment Center with Lieutenant  
10 level assessment tests, and then you're ranked according to how  
11 well you did. You compare to similar people you test against.

12 Q. When did you ultimately promote to Lieutenant?

13 A. August 31st, 2017.

14 Q. And what position were you put in as a Lieutenant?

15 A. I am a Lieutenant at the Aviation Support.

16 Q. And you've been in that position ever since through today?

17 A. Correct.

18 Q. Okay. Let me ask you a little bit about getting back to  
19 the time period when this was going on with ROP and these  
20 issues. You said you had some emotional problems?

21 A. Yes.

22 Q. Did you seek any counseling?

23 A. I did.

24 Q. Can you tell the jury about that?

25 A. Yes. Not something I ever thought that I would do, but it

1 became very overwhelming for me, and so I sought out some  
2 professional help, saw a doctor by the name of Joan Scott, and  
3 then she had a counterpart there in her office that handled  
4 medication.

5 Q. Did you try taking medication?

6 A. Oh, I did.

7 Q. Did it work?

8 A. No. It did not work for me.

9 Q. Did you keep taking the medication?

10 A. I think I tried four, four or five different medications,  
11 had a lot of pretty horrible side effects.

12 Q. Had you ever been on medication for emotional problems  
13 before?

14 A. No.

15 Q. Had you ever sought counseling for emotional problems  
16 before?

17 A. No.

18 Q. When did you seek this counseling?

19 A. Excuse me. In 2010.

20 Q. How many sessions did you go to?

21 A. I think I saw the doctor for about four months.

22 Q. Why did you stop going?

23 A. The doctor crossed a professional boundary that wasn't  
24 okay with me, so I stopped my sessions.

25 Q. Okay. Now that you've made it to Lieutenant, what's the

1 next step up in terms of rank for promotional purposes?

2 A. After Lieutenant at APD it's no longer in your hands.

3 It's all political, if you will. There's no more testing. The  
4 Chief has to basically like you or take notice of you, somehow.

5 Q. So for Sergeant and Lieutenant you can go through a  
6 testing proses, but for -- What's the next step up? Captain?

7 A. It's called Commander now.

8 Q. I'm sorry, Commander?

9 A. Yeah.

10 Q. Are you able to do a testing process?

11 A. No, no more testing for me.

12 Q. Would you -- If you were able, could you go back to SID?

13 A. No. That's -- That's an invitation-only sort of a place.

14 Q. When you say "invitation-only sort of a place," what do  
15 you mean?

16 A. Those are very highly coveted positions, and they require  
17 a high degree of trust, a high degree of popularity, if you  
18 will, and due to my experiences and what has happened and my  
19 filing of an EEOC, that won't -- that won't happen for me.

20 Q. Well, let me ask you this. Since you ultimately made the  
21 decision and got promoted to Sergeant, did you ever get an  
22 invitation from SID to be a Sergeant over there?

23 A. No.

24 Q. Since your promotion to Lieutenant, have you gotten an  
25 invitation by SID to be a Lieutenant there?

1 A. No.

2 MR. VILLA: May I have just a moment, Your Honor?

3 THE COURT: You may.

4 MR. VILLA: I'll pass the witness, Your Honor.

5 THE COURT: All right. Well, it's ten minutes till  
6 5:00.

7 Ms. Williams, I imagine it will take longer than ten  
8 minutes.

9 MS. WILLIAMS: It absolutely will, Your Honor. I  
10 have a lot to cover with Lieutenant Welch.

11 THE COURT: It was a lengthy direct examination.

12 So, ladies and gentlemen, we'll just pause for the  
13 day at this time. So I wouldn't be doing my job if I released  
14 you without giving you an instruction. This kind of goes along  
15 with what we talked about earlier today.

16 All right. So you'll hear this instruction probably  
17 multiple times as we go forward. Now, we'll be recessing for  
18 the day, and during the recess, do not discuss the case with  
19 anyone other than yourselves. And then only in the jury room  
20 when all of you are present. Do not attempt to decide the  
21 outcome of the case before you begin the final deliberations.

22 Please continue to wear your jury badges while in and  
23 around the courthouse. Obviously, at the end of the day, you  
24 may leave those in the jury deliberations room.

25 If someone other than your fellow juror happens to

1 discuss the case in your presence, please report that at once,  
2 as soon as you can anyway, to the staff of my court. If you  
3 happen to see or hear any news accounts of this trial, also,  
4 please report that to my staff, as well.

5 Okay. So that will be it for the day. Let me just  
6 ask, did anybody have any trouble getting to the courthouse  
7 this morning? Just by show of hands. All right. It may take  
8 a little while, so I would ask that you're in the jury  
9 deliberation room as close to 8:30 tomorrow morning, and we'll  
10 get started just as promptly as we can.

11 Okay. Until then, please have a restful evening, and  
12 we'll see you in the morning.

13 Please rise for the jury.

14 (Jury out at 4:50 p.m.)

15 THE COURT: All right. You may be seated.

16 Ms. Welch, you may step down.

17 All right. Let me just ask. Mr. Villa, is there  
18 anything that I should cover now at this time before we recess  
19 for the day?

20 Same question for Ms. Williams.

21 MR. VILLA: I don't think so, Your Honor. I just  
22 wanted to say, you know, I think this is clearly the longest  
23 witness that we intend to have. I think the others will go  
24 more quickly, and I do think that we still have communicated  
25 very well about dual purposing, for lack of a better word,

1 these witnesses that we'll be calling, many of the individuals  
2 you've heard about, and so that the defense and plaintiff will  
3 be covering both their cases at the same time. And so I think  
4 that to some degree, even though it's been a long day, we're  
5 still working on trying to cover that. I'll let Ms. Williams  
6 speak on it, as well.

7 MS. WILLIAMS: Your Honor, some of the witnesses  
8 we've chosen to call back in our case-in-chief and not do our  
9 direct while we're here, but some are out of the town and have  
10 other jobs and aren't able to do that. We have tried to finish  
11 witnesses -- agree to finish witnesses in plaintiff's  
12 case-in-chief, but there are some that we need to call back.

13 THE COURT: Okay. Can you give me an idea,  
14 Mr. Villa, of what your plan is for tomorrow, who you would  
15 call?

16 MR. VILLA: Sure. I was just writing that down, Your  
17 Honor.

18 THE COURT: Okay. Not that I would hold you to the  
19 minute, Ms. Williams, but how long would you expect?

20 MS. WILLIAMS: Your Honor --

21 THE COURT: I understand this is an art form.

22 MS. WILLIAMS: It is an amorphous art, but I told  
23 Mr. Villa before he started that I had two hours, and I have a  
24 lot of stickies that have come up since then, so between two  
25 and three, I think.



1 THE COURT: Okay. With that idea, what would be the  
2 plan for tomorrow, Mr. Villa?

3 MR. VILLA: Your Honor, we would be planning to call  
4 Robert Smith, Danny Garcia, Dr. Bill Foote, who is only  
5 available Tuesday afternoon, so we'll need to get him on. If  
6 there's additional time, we can also call Jason Bowie, and I  
7 think -- I'm just double-checking on subpoenas, but Nick  
8 Laskar.

9 MS. WILLIAMS: Your Honor, Ryan, we made Hudson  
10 available tomorrow. He came from out-of-state and so he has to  
11 go tomorrow.

12 MR. VILLA: Yes. Well, Tuesday or Wednesday morning,  
13 right.

14 MS. WILLIAMS: Is that right?

15 MR. VILLA: Yes. So Hudson's the other one. The  
16 agreement we have amongst the parties, he's one of the ones  
17 from outside of town that I think we are double purposing so  
18 that he'll be here tomorrow afternoon and available Wednesday,  
19 as well, so my thinking was he would probably be going on at  
20 the end of the day Tuesday.

21 THE COURT: Tuesday or early Wednesday?

22 MR. VILLA: Yeah. I think that would probably cover  
23 tomorrow.

24 THE COURT: Okay.

25 MR. VILLA: So some of these folks, like Mr. Garcia

1 and Jason Bowie, they're here all week, so I may not use them  
2 if we end up taking the time to get Mr. Hudson out of here on  
3 Tuesday and Dr. Foote out of here on Tuesday, as well.

4 THE COURT: Okay. My instruction is just fill the  
5 trial day, maximize the time we have with the jury. It sounds  
6 like you have planned for that.

7 MR. VILLA: Yes, Your Honor.

8 THE COURT: Okay. Ms. Williams, is there anything  
9 that you think I should take up?

10 MS. WILLIAMS: No, Your Honor. I think we're in a  
11 good shape.

12 THE COURT: Okay. We'll get a copy of the jury  
13 seating chart to you this evening if you don't have it already.  
14 We'll get it to you before you leave.

15 MS. WIGGINS: All right. It was given to us earlier  
16 today.

17 THE COURT: All right. We'll be in recess. I'm just  
18 going to assemble things here, but you may continue on. All  
19 right.

20 (Court stood in recess at 4:54 p.m.)  
21  
22  
23  
24  
25

I N D E X

EXAMINATION

PAGE

PLAINTIFF'S WITNESS TERYSA WELCH

Direct Examination by Mr. Villa

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I N D E X

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3 DISTRICT OF NEW MEXICO  
4

5 I, Danna Schutte Everett, RPR, CCR, CRR, Official  
6 Court Reporter for the State of New Mexico, do hereby  
7 certify that the foregoing pages constitute a true  
8 transcript of proceedings had before the said Court held  
9 in the city of Albuquerque, New Mexico, in the matter  
10 therein stated.

11 In testimony whereof, I have hereunto set my hand on  
12 this 15th day of June, 2018.  
13

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